

APPENDIX A

Part 3

Correspondence Received Before Publication of the Draft DMMP/PEIS



US Army Corps of Engineers
BUILDING STRONG®

Corps to release Long Island Sound Dredged Material Management Plan, PEIS for public review, comment

Posted 8/14/2015

Release no. 2015-073

Contact

Tim Dugan 978-318-8264

cenae-pa@usace.army.mil

CONCORD, Mass. – The U.S. Army Corps of Engineers will release for public review and comment the Draft Dredged Material Management Plan (DMMP) and Draft Programmatic Environmental Impact Statement (PEIS) for Long Island Sound on Monday, Aug. 17, 2015. The DMMP and PEIS will be available for review on the Corps website at:

www.nae.usace.army.mil/Missions/ProjectsTopics/LongIslandSoundDMMP.aspx.

Also, the Corps is extending the public comment period that was originally listed in the July 23, 2015 public notice to now run through Oct. 5, 2015. The Corps will hold public hearings Aug. 24 – 27, 2015 in Connecticut and New York to provide an overview of the reports and receive public comments.

The DMMP was requested by the Governors of Connecticut and New York in a Feb. 8, 2005 joint letter to the Chief of Engineers. The need for a DMMP also was identified by the U.S. Environmental Protection Agency's June 3, 2005 Rule that designated two of the Sound's historic open-water placement sites, the Central Long Island Sound site and the Western Long Island Sound site for continued use. The EPA's rule required preparation of a DMMP to examine alternative placement practices, with the goal of reducing or eliminating open-water placement of dredged material in the waters of Long Island Sound wherever practicable.

Long Island Sound is a large coastal estuary located between Long Island, New York on the south, and the shores of New York, Connecticut and southwestern Rhode Island on the north. This study included adjacent waters including Block Island Sound, Little Narragansett Bay, Fishers Island Sound, Peconic Bay and Gardiners Bay. A total of nearly 240 harbors, coves, bays and rivers supporting various levels of navigational access are located along these shores.

The Corps is responsible for maintaining 52 Federal Navigation Projects (FNPs) in Long Island Sound and adjacent waters that include general navigation features requiring periodic maintenance dredging. These include 31 projects in Connecticut, 17 in New York and four in Rhode Island.

The DMMP examines the need for dredging, the history of dredging and dredged material placement, and current beneficial use practices. The DMMP identifies and assesses alternatives for future dredged material placement and beneficial use, identifies the likely Federal Base Plans (least cost environmentally acceptable plan) for future Federal dredging activities, and recommends further action to be taken by individual projects as they come up for their next maintenance cycle, or in feasibility studies for proposed project improvements.

The DMMP identifies practicable potential cost-effective and environmentally acceptable placement alternatives to meet the dredging needs of Long Island Sound's ports and harbors. Without practicable placement alternatives dredging costs will increase, fewer projects will be maintained, economic viability of projects will be reduced, and navigation dependent sectors of the regional economy will be impaired. Opportunities to beneficially use dredged material for purposes of coastal resiliency and environmental restoration and enhancement may not be realized without a DMMP.

The DMMP makes specific recommendations for further interagency involvement in dredged material management, dredging data management, study of the impacts to open water placement, and supporting opportunities for beneficial use.

Two public hearings will be held in New York: on Monday, Aug. 24, 2015 in the Village Center at Port Jefferson at 101-A East Broadway in Port Jefferson, N.Y.; and on Tuesday, Aug. 25, 2015 at the Marriott Long Island at 101 James Doolittle Blvd. in Uniondale, N.Y.

Two public hearings will be held in Connecticut: on Wednesday, Aug. 26, 2015 at the University of Connecticut-Stamford at 1 University Place in Stamford, Conn.; and on Thursday, Aug. 27, 2015 at the Holiday Inn-New London at 35 Governor Winthrop Blvd. in New London, Conn.

Registration for all meetings will begin at 5:30 p.m. and the hearings will start at 6 p.m.

Public comments on the Draft DMMP and Draft PEIS should be forwarded no later than Oct. 5, 2015 to the U.S. Army Corps of Engineers, New England District, (ATTN: LIS DMMP/PEIS Program Manager Meghan Quinn), 696 Virginia Road, Concord, MA 01742-2751 or by email to: meghan.c.quinn@usace.army.mil.



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

CENAE-PP-C

14 August 2015

MEMORANDUM FOR COMMANDER, U.S. Army Corps of Engineers, North Atlantic Division, CENAD-CWID-P, (Ms. Linda Monte), Fort Hamilton Military Community, Bldg 301, General Lee Avenue, Brooklyn, New York 11252-6700

SUBJECT: Long Island Sound Draft Dredged Material Management Plan (DMMP) and Draft Programmatic Environmental Impact Statement (PEIS), Request for Review.

1. In accordance with the Project Review Plan (PRP) approved by NAD on 20 February 2015, enclosed are eight copies of a compact disk containing the subject draft report documents. Per the PRP the draft report is being released for concurrent public and MSC review. The attached Public Notice includes the dates and places for public hearings to be held in NY and CT on 24-27 August 2015.
2. Documents submitted on enclosed compact disk:
 - (1) Draft DMMP
 - (2) Draft PEIS
 - (3) DMMP/PEIS Appendices (A through I)
 - (4) Supporting technical investigation reports for DMMP/PEIS (#1 through #14)
 - (5) District Quality Control certification and report
 - (6) ATR certification, Dr. Checks report and track-change versions of DMMP and PEIS.
 - (7) District Counsel's Legal Sufficiency Certification
 - (8) Project Review Plan - Approved by NAD 20 February 2015
 - (9) Project Management Plan (Appendix I to DMMP/PEIS)
3. In order to maintain the project schedule for completion of a final DMMP/PEIS by the end of December, comments should be submitted to the District by 18 September 2015.
4. If you have any questions or require further information, please contact the Project Manager, Ms. Meghan Quinn, who may be reached at 978-318-8179 or via email at: meghan.c.quinn@usace.army.mil.


CHRISTOPHER J. BARRON
COL, EN
Commanding



DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, US ARMY CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD MA 01742-2751

August 12, 2015

Programs & Project Management Division
Civil/IIS Project Management Branch


The Honorable Dannel P. Malloy
Governor of Connecticut
State Capitol
210 Capitol Avenue
Hartford, Connecticut 06106

Dear Governor Malloy:

Enclosed please find a copy of the public notice for public hearings regarding a Draft Dredged Material Management Plan (DMMP) and Draft Programmatic Environmental Impact Statement (PEIS) for Long Island Sound. A copy of the draft documents is provided on the enclosed CD. This public notice was published on the websites and emailed to the project mailing list of stakeholders for the U.S. Army Corps of Engineers New England District and New York District on July 24, 2015.

If you have any questions or comments, please contact Ms. Meghan Quinn, Project Manager, at (978) 318-8179, or Mr. Michael Keegan, Chief, Civil/IIS Project Management Branch, at (978) 318-8087.

Sincerely,


Christopher J. Barron
Colonel, Corps of Engineers
District Engineer

Enclosures

SAME LETTER SENT TO: see attached



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

August 12, 2015

Programs & Project Management Division
Civil/IIS Project Management Branch

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

Enclosed please find a copy of the public notice for public hearings regarding a Draft Dredged Material Management Plan (DMMP) and Draft Programmatic Environmental Impact Statement (PEIS) for Long Island Sound. A copy of the draft documents is provided on the enclosed CD. This public notice was published on the websites and emailed to the project mailing list of stakeholders for the U.S. Army Corps of Engineers New England District and New York District on July 24, 2015.

If you have any questions or comments, please contact Ms. Meghan Quinn, Project Manager, at (978) 318-8179, or Mr. Michael Keegan, Chief, Civil/IIS Project Management Branch, at (978) 318-8087.

Sincerely,

A handwritten signature in black ink, appearing to read "CJB", is written over the typed name of Christopher J. Barron.

Christopher J. Barron
Colonel, Corps of Engineers
District Engineer

Enclosures

SAME LETTER SENT TO: see attached



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

August 12, 2015

Programs & Project Management Division
Civil/IIS Project Management Branch

The Honorable Gina M. Raimondo
Governor of Rhode Island
82 Smith Street
Providence, RI 02903

Dear Governor Raimondo:

Enclosed please find a copy of the public notice for public hearings regarding a Draft Dredged Material Management Plan (DMMP) and Draft Programmatic Environmental Impact Statement (PEIS) for Long Island Sound. A copy of the draft documents is provided on the enclosed CD. This public notice was published on the websites and emailed to the project mailing list of stakeholders for the U.S. Army Corps of Engineers New England District and New York District on July 24, 2015.

If you have any questions or comments, please contact Ms. Meghan Quinn, Project Manager, at (978) 318-8179, or Mr. Michael Keegan, Chief, Civil/IIS Project Management Branch, at (978) 318-8087.

Sincerely,

A handwritten signature in black ink, appearing to read "CJ Barron", is written over a horizontal line.

Christopher J. Barron
Colonel, Corps of Engineers
District Engineer

Enclosures

SAME LETTER SENT TO: see attached



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

August 12, 2015

Programs & Project Management Division
Civil/IIS Project Management Branch

The Honorable Richard Blumenthal
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Blumenthal:

Enclosed please find a copy of the public notice for public hearings regarding a Draft Dredged Material Management Plan (DMMP) and Draft Programmatic Environmental Impact Statement (PEIS) for Long Island Sound. A copy of the draft documents is provided on the enclosed CD. This public notice was published on the websites and emailed to the project mailing list of stakeholders for the U.S. Army Corps of Engineers New England District and New York District on July 24, 2015.

If you have any questions or comments, please contact Ms. Meghan Quinn, Project Manager, at (978) 318-8179, or Mr. Michael Keegan, Chief, Civil/IIS Project Management Branch, at (978) 318-8087.

Sincerely,

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Christopher J. Barron
Colonel, Corps of Engineers
District Engineer

Enclosures

SAME LETTER SENT TO: see attached

SAME LETTER SENT TO:

The Honorable Richard Blumenthal
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

Copy Furnished:

The Honorable Richard Blumenthal
United States Senate
90 State House Square, 10th Floor
Hartford, CT 06103

The Honorable Chris Murphy
United States Senate
Washington, D.C. 20510

Copy Furnished:

The Honorable Chris Murphy
United States Senate
One Constitution Plaza, 7th Floor
Hartford, CT 06103

The Honorable John Larson
United States House of Representatives
1501 Longworth House Office Bldg
Washington, D.C. 20515

Copy Furnished:

The Honorable John Larson
United States Representative
221 Main Street, 2nd Floor
Hartford, CT 06106

The Honorable Joe Courtney
United States House of Representatives
2348 Rayburn House Office Building
Washington, D.C. 20515

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The Honorable Joseph Courtney
United States Representatives
55 Main Street, Suite 250
Norwich, CT 06360

The Honorable Joseph Courtney
United States Representative
77 Hazard Avenue, Unit J
Enfield, CT 06082

The Honorable Rosa DeLauro
United States House of Representatives
2413 Rayburn House Office Building
Washington, D.C. 20515

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The Honorable Rosa DeLauro
United States Representative
59 Elm Street
New Haven, CT 06510

The Honorable James Himes
United States House of Representatives
119 Cannon House Office Building
Washington, D.C. 20515

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The Honorable James Himes
United State Representative
211 State Street, 2nd Floor
Bridgeport, CT 06604

The Honorable James Himes
United State Representative
888 Washington Boulevard, 10th Floor
Stamford, CT 06901

The Honorable Elizabeth Esty
United States House of Representatives
509 Cannon House Office Building
Washington, D.C. 20515

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The Honorable Elizabeth Esty
United States Representative
114 West Main Street
Old Post Office Plaza, LLC
New Britain, CT 06051

The Honorable Charles E. Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Copy Furnished:

The Honorable Charles E. Schumer
United States Senate
780 Third Avenue, Suite 2301
New York, NY 10017

The Honorable Kirsten Gillibrand
United States Senate
478 Russell Senate Office Building
Washington, DC 20510

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The Honorable Kirsten Gillibrand
United States Senate
780 Third Avenue, Suite 2601
New York, New York 10017

The Honorable Lee Zeldin
United States House of Representatives
1517 Longworth House Office Building
Washington, DC 20515

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The Honorable Lee Zeldin
United States Representative
31 Oak Street, Suite 20
Patchogue, NY 11772

The Honorable Steve Israel
United States House of Representatives
2457 Rayburn House Office Building
Washington, DC 20515

Copy Furnished:

The Honorable Steve Israel
United States Representative
534 Broad Hollow Road, Suite 302
Melville, NY 11747

The Honorable Joseph Crowley
United States House of Representatives
1436 Longworth House Office Building
Washington, D.C. 20515

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The Honorable Joseph Crowley
United States Representative
82-11 37th Avenue, Suite 402
Queens, NY 11372

The Honorable Eliot L. Engel
United States House of Representatives
2462 Rayburn House Office Building
Washington, DC 20515

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The Honorable Eliot L. Engel
United States Representative
6 Gramatan Avenue, Suite 205
Mt. Vernon, NY 10550

The Honorable Nita Lowey
United States House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

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The Honorable Nita Lowey
United States Representative
67 North Main Street, #101
New City, NY 10956

The Honorable Gina M. Raimondo
Governor of Rhode Island
82 Smith Street
Providence, RI 02903

The Honorable Jack Reed
United States Senate
728 Hart Senate Office Building
Washington, DC 20510

Copy Furnished:

The Honorable Jack Reed
United States Senate
U.S. District Courthouse
One Exchange Terrace, Suite 408
Providence, RI 02903-1744

The Honorable Dannel P. Malloy
Governor of Connecticut
State Capitol
210 Capitol Avenue
Hartford, Connecticut 06106

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

The Honorable Sheldon Whitehouse
United States Senate
Hart Senate Office Bldg. Room 530
Washington, DC, 20510

Copy Furnished:

The Honorable Sheldon Whitehouse
United States Senate
170 Westminster St. Suite 1100
Providence, RI, 02903

The Honorable James Langevin
United State House of Representatives
109 Cannon House Office Building
Washington, DC 20515

Copy Furnished:

The Honorable James Langevin
United State Representative
300 Centerville Rd, Suite 200 South
Warwick, RI 02886

SUFFOLK COUNTY LEGISLATURE

Legislator Al Krupski

1st District

Committees

Chairman – Public Works,
Transportation & Energy
Vice Chairman – Environment,
Planning & Agriculture
Member – Veterans & Seniors



Boards & Commissions

Agriculture & Farmland Protection Board
Soil & Water Conservation District
Sewer Infrastructure Committee
Sewer Agency
Space Management Committee
Dredge Project Screening Committee

August 10, 2015

Ms. Meghan Quinn
United States Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

RE: Long Island Sound Dredge Material Management Plan (LIS DMMP)

Dear Ms. Quinn,

As a representative of Southold, Riverhead and Eastern Brookhaven in the Suffolk County Legislature and as a former Southold Town Trustee and Councilman, I writing in strong opposition to what I anticipate will be the United States Army Corps of Engineers and the United States Environmental Protection Agency (US EPA) long-term plan to continue to use the Long Island Sound for the open water disposal of dredge spoil.

The Long Island Sound is an estuary of national significance and for many of the millions of people who live in Long Island and Connecticut it is a vital resource for fishing, recreating and commerce. The water quality of the Long Island Sound has been degraded for decades by inappropriate land use, overdevelopment, pollution caused by the introduction of toxic substances, pathogen contamination and hypoxia. It is imperative that all governmental agencies do everything possible to protect this vitally important resource. To continue to dump dredge spoil from potentially contaminated sites is in sharp contrast to this charge.

I am also deeply frustrated by the US ACE's failure to adequately notify the public and other interested parties, including town and county governments, on the pending hearings for the Programmatic Environmental Impact Statement (PEIS) and the DMMP. By happenstance, my office was alerted to the upcoming hearings by a local environmental advocacy group.

Equally distressing is the fact that stakeholders who wish to testify at the Long Island hearings will only have seven days to review, what I assume will be the voluminous documents that comprise the PEIS and the DMMP before the first hearing on August 24 as the documents will only become available for public inspection on August 17.

The DMMP was first requested by the governors of New York and Connecticut in July of 2005, thus, the DMMP is ten years in the making. A plan of such public import deserves to be

scrutinized by stakeholders and adequate time should be given to do so. The 32 day public comment period, which ends on September 18, 2015, should be extended to allow stakeholders enough time to read the documents, consider the findings and respond.

Sincerely,

A handwritten signature in black ink that reads "Albert J. Krupski, Jr." in a cursive script.

Albert J. Krupski, Jr.
Suffolk County Legislator

cc: NYS Governor Andrew Cuomo
NYS Senator Kenneth LaValle
NYS Assemblyman Anthony Palumbo
NYS Assemblyman Steve Englebright
Marc Gerstman, Acting Commissioner, NYS DEC
Curt Spalding, Administrator, EPA Region 1
Judith A. Enck, Administrator, EPA Region 2
Supervisor Scott Russell, Supervisor, Southold Town
Supervisor Sean Walter, Riverhead Town
Supervisor Edward Romaine, Brookhaven Town



M A N H A S S E T B A Y P R O T E C T I O N C O M M I T T E E

Sarah Deonarine, Director • c/o Town of North Hempstead Parking District • 15 Vanderventer Avenue

Port Washington, New York 11050-3710 • P: 516-869-7983 • F: 516-767-4638 • E: mbpcExec@gmail.com

August 7, 2015

Meghan Quinn
Programs & Projects, Management Division
US Army Corps of Engineers, NE District
696 Virginia Road
Concord, MA 01742-2751

Re: Request for extension of comment period to 120 days for Draft Dredged Material Management Plan and the Draft Programmatic Environmental Impact Statement for Long Island Sound and to reschedule public hearing dates

Dear Ms. Quinn:

The Manhasset Bay Protection Committee, which I represent, was formed in 1997 to address water quality issues in Manhasset Bay, an embayment on the southwestern side of Long Island Sound. The Committee is made up of 13 villages in the Manhasset Bay watershed, the Town of North Hempstead, and Nassau County. I am writing on behalf of these Committee members to respectfully request a public comment period extension from the current 30 day window to 120 days. In addition, I am requesting that the public hearings be moved to October.

The proposed public comment period of 30 days is woefully inadequate, especially considering that the documents will likely be 1,000 pages in length. According to the public notice, the documents will not be posted until August 17th with public hearings only being one week later during the busy summer season. Given that these documents have taken a decade to prepare and will determine dredge disposal options for the next two decades, the public cannot be expected to give significant comments in 30 days. In addition, it will take more time than provided to reach out to my member municipalities and receive and collate their comments.

As such and in reiteration, I urge you to extend the public comment period to at least 120 days and either reschedule the August public hearings or supplement them with additional hearings in October. I understand that this has been a long process that all parties wish see come to an amicable close, but please do not do so at the expense of a meaningful public review period.

Safe navigation as well as the safe disposal of dredged material is very important to the local governments around Manhasset Bay and this request is meant to enable my colleagues and I to

Our efforts would not be possible without the assistance of the NYS Dept. of State, the NYS Dept. of Environmental Conservation, and the Long Island Sound Study, and NY Sea Grant.

be most useful to you in this review period. I look forward to reviewing and providing comments on both documents.

Thank you for your consideration of this request. I look forward to your response.

Sincerely,



Sarah Deonarine
Executive Director

CC Senator Charles Schumer
 Senator Kirsten Gillibrand
 Congressman Steve Israel
 NYS Senator Jack Martins
 NYS Assemblywoman Michelle Schimel
 Nassau County Executive Edward P. Mangano,
 Nassau County Legislator Richard Nicoletto (9th District)
 Nassau County Legislator Ellen Birnbaum (10th District)
 Nassau County Legislator Delia DeRiggi-Whitton (11th District)
 Supervisor Judi Bosworth, Town of North Hempstead
 Town Councilwoman Anna M. Kaplan (4th District)
 Town Councilwoman Dina M. De Giorgio (6th District)
 Mayor Haagenson, Village of Baxter Estates
 Mayor Phillips, Village of Flower Hill
 Mayor Bral, Village of Great Neck
 Mayor Lopatkin, Village of Kensington
 Mayor Kalnick, Village of Kings Point
 Mayor Giunta, Village of Manorhaven
 Mayor Haggerty, Village of Munsey Park
 Mayor Williams, Village of Plandome
 Mayor Riscia, Village of Plandome Heights
 Mayor Donno, Village of Plandome Manor
 Mayor Weitzner, Village of Port Washington North
 Mayor Adler, Village of Sands Point
 Mayor Weinberg, Village of Thomaston

Wading River Civic Association

PO Box 805, Wading River, NY 11792

wrcivic@optonline.net

August 6, 2015

Meghan Quinn
Programs & Projects, Management Division
US Army Corp of Engineers, NE District
696 Virginia Road
Concord, MA 01742-2751

RE: Comment Period Extension Request for 120 days for the Draft Dredged Material Management Plan & the Draft Environmental Impact Statement for Long Island Sound. Public Hearing dates rescheduled.

Dear Ms. Quinn,

The Wading River Civic Association has worked with groups in both Connecticut and New York to help preserve the environmental integrity of the Long Island Sound. We are writing you to strongly suggest changes regarding the comment period for the pending Dredged Material Management Plan (DMMP) and the currently scheduled public hearing dates.

It is our belief that the public hearing dates must be changed. It's our understanding that the DPEIS will not be released until August 17th and that the public hearings will take place on August 24th and August 27th. This gives the members of the public about a week to review a thousand page document and provide thoughtful comments within the proposed 30 day comment period. This is a formula for discouraging public participation.

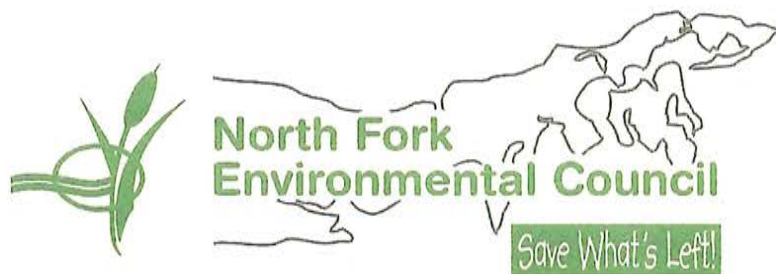
Fortunately this situation can be corrected. We respectfully suggest that the comment period should be 120 days. We also strongly urge you to consider rescheduling the proposed hearings or providing 2 additional hearings in October. These changes will help to maximize public participation in this important process.

Thanks for your consideration. We look forward to your response.

Sincerely,



Sid Bail
President



North Fork Environmental Council
12700 Main Road
PO Box 799
Mattituck, NY 11952

Phone: 631.298.8880
Fax: 631.298.4649
Web: www.NFEC1.org

6 August 2015

Meghan Quinn
Programs & Projects, Management Division
US Army Corp of Engineers, NE District
696 Virginia Rd
Concord, MA 01742-2751

RE: *Comment Period Extension Request for 120 days for the Draft Dredged Material Management Plan & the Draft Programmatic Environmental Impact Statement for Long Island Sound. Public Hearing dates rescheduled.*

Dear Ms. Quinn,

The North Fork environmental Council (NFEC) is a not-for-profit grassroots environmental organization, founded in 1972, working to protect eastern Long Island's natural resources and its way of life. We have participated in several dredged material workgroup meetings over the past two years.

We are writing to you with two important requests:

1. The NFEC is requesting that you extend the comment period for the *Draft Dredged Material Management Plan (DMMP) & the Draft Programmatic Environmental Impact Statement (DPEIS) for Long Island Sound (LIS)* to **120 days**.

The preparation and development of this document has taken 10 years. The proposed 30-day comment period is grossly inadequate. The documents, which are slated to be released on August 17, will determine long-term disposal options for dredged material for the next 20 years in an estuary of national significance. Due, to the serious nature of this planning process and its outcome, it is critical that members of the public have the necessary and adequate time to review the documents and make substantive comments.

2. The NFEC also requests that the public hearings currently scheduled for New York and Connecticut be **rescheduled to October** or that additional hearings be scheduled in October to supplement the August hearings.

Public hearing dates slated for the end of August do not allow for meaningful and substantive public participation, as many members of the public take vacation at this time. If the document is released on August 17 as scheduled, that would only give the public between seven and 10 days to review and assess a 1000-page plan before the hearings are scheduled for August 24 through August 27. That is not enough time.

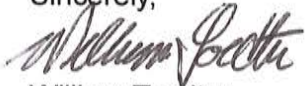
If took 10 years for various agencies and professionals to craft this document. The public should not be expected to review it in just 10 days.

Public participation in protecting the Long Island Sound has been undeniable strong and consistent for 30 years. Our federal agencies need to provide for a meaningful opportunity to allow maximum participation in this critical planning process. By either rescheduling the hearings or providing at least two (2) additional hearings in October, the Army Corp will be inclusive to all members of the public. Allowing greater public participation will ensure a more comprehensive process and outcome.

The NFEC looks forward to reviewing and providing comprehensive comments on both documents. We find that a 120-day comment period is a reasonable time frame to allow maximum public participation for review and comment.

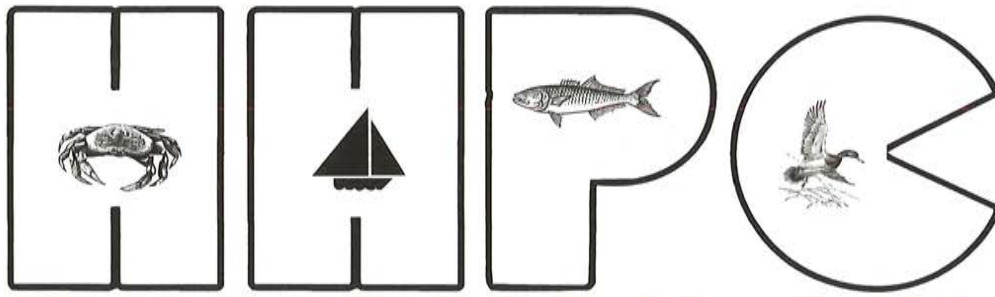
Thank you for your consideration and we look forward to your response.

Sincerely,

A handwritten signature in dark ink, appearing to read 'William Toedter', is written over the typed name.

William Toedter
president, NFEC

cc: U.S. Sen. Charles Schumer
U.S. Sen. Kristen Gillibrand
U.S. Congressman Lee Zeldin
NYS Senator Ken LaValle
NYS Assemblyman Steve Engelbright
NYS Assemblyman Anthony H. Palumbo
Southold Supervisor Scott Russell
Greenport Mayor George W. Hubbard, Jr.



Hempstead Harbor Protection Committee

www.HempsteadHarbor.org

An Inter-municipal Watershed Protection Committee of the County of Nassau, the Towns of North Hempstead and Oyster Bay, the City of Glen Cove, and the Villages of Sea Cliff, Roslyn Harbor, Roslyn, Flower Hill and Sands Point

"Alone we can do so little; together we can do so much." - Helen Keller

August 6, 2015

Ms. Meghan Quinn
Programs and Projects, Management Division
U.S. Army Corps of Engineers, NE District
696 Virginia Road
Concord, MA 01742-2751

**RE: DRAFT DREDGED MATERIAL MANAGEMENT PLAN FOR LONG ISLAND SOUND & DRAFT EIS
REQUEST FOR EXTENSION OF PUBLIC COMMENT PERIOD AND POSTPONEMENT OF HEARING DATES**

Dear Ms. Quinn:

On behalf of the nine municipal members of the Hempstead Harbor Protection Committee, I am writing today to urge you to extend the public comment period for the **Draft Dredged Material Management Plan (DMMP)** and the **Draft Programmatic Environmental Impact Statement (DPEIS) for Long Island Sound** to at least 120 days and that the public hearings on these documents be postponed until October.

According to the recent public notice, the documents (estimated to be about 1,000 pages) will not be released until August 17th for public hearings scheduled to be held between August 24th and August 27th. Notwithstanding the fact that many (including me) will be on vacation during this time of year, this only allows between 7 and 10 days in which to read the documents, discuss concerns with municipalities and colleagues, and prepare comments. It is simply not possible or fair to expect comprehensive comments on a plan that has been nearly 10 years in the making in such a short period of time. Our request for October is based on the fact that September tends to be an extremely busy month as people get back into their routines after the summer.

Maintaining local waterways is an important and costly fact of life for local governments on Long Island and elsewhere around the Sound. The DMMP will likely shape the way that dredged materials are handled for at least the next two decades and adding a few more weeks to the process could result in a plan that best reflects the needs of stakeholders.

Thank you for your consideration.

Sincerely,

Eric Swenson
Executive Director

Ms. Meghan Quinn
August 6, 2015
Page two.

Copies to: Tom Powell, HHPC Chair and Representative, Village of Sea Cliff
County Executive Edward Mangano, Nassau County
Nassau County Legislator Delia DeRiggi-Whitton
Supervisor John Venditto, Town of Oyster Bay
Supervisor Judi Bosworth, Town of North Hempstead
Mayor Edward Adler, Village of Sands Point
Mayor Elaine Phillips, Village of Flower Hill
Mayor John Durkin, Village of Roslyn
Mayor David Mandell, Village of Roslyn Harbor
Mayor Bruce Kennedy, Village of Sea Cliff
Mayor Reginald Spinello, City of Glen Cove
Carol DiPaolo, Coalition to Save Hempstead Harbor
Daniel Fucci, HHPC Representative, Nassau County
Sean Jordan, HHPC Representative, Town of Oyster Bay
Erin Reilley, HHPC Representative, Town of North Hempstead
Kevin Braun, HHPC Representative, Town of North Hempstead
Mallory Nathan, HHPC Representative, Town of North Hempstead
Catherine Chester, HHPC Representative, Village of Sands Point
Peedee Shaw, HHPC Representative, Village of Roslyn
Abby Kurlender, HHPC Representative, Village of Roslyn Harbor
Tab Hauser, HHPC Representative, City of Glen Cove

COUNTY OF SUFFOLK

KARA HAHN
LEGISLATOR, FIFTH DISTRICT

COMMITTEE CHAIR
ENVIRONMENT, PLANNING
& AGRICULTURE



VICE-CHAIR
PARKS & RECREATION

MEMBER
PUBLIC SAFETY
ECONOMIC DEVELOPMENT
& ENERGY

COUNTY LEGISLATURE

August 5, 2015

US Army Corp of Engineers, NE District
Programs & Projects, Management Division
Attention: Meghan Quinn
696 Virginia Road
Concord, Massachusetts 01742-2751

Dear Ms. Quinn:

I am writing to request that the Corp of Engineers extend its comment period for the *Draft Dredged Material Management Plan (DMMP) & the Draft Programmatic Environmental Impact Statement (DPEIS) for Long Island Sound (LIS)* from its current 30 days to 120 days. This extremely voluminous document is the culmination of nearly a decade of work and is meritorious of a significant review and comment time period for all stakeholders.

In addition to the extended review period, I also request that you reschedule the currently planned public hearings, now set for August, to the early fall in order to limit the number of people precluded because of vacations. If this is not possible, please consider scheduling additional public hearing dates that will allow for the inclusion of interested parties who are unable to attend during the traditional summer vacation weeks in August.

Thank you for your consideration of my request. As this is an important document that will have long-lasting impacts on the future of the Long Island Sound I look forward to your response.

Sincerely,

Kara Hahn
Suffolk County Legislator
Fifth District

**CITIZENS
CAMPAIGN**
FOR THE ENVIRONMENT



www.citizenscampaign.org

□ 225A Main Street • Farmingdale, NY 11735
516-390-7150
□ 188 East Post Road, Suite #202 • White Plains, NY 10601
914-358-9840
□ 744 Broadway • Albany, NY 12207
518-772-1862
□ 733 Delaware Road, Box 140 • Buffalo, NY 14223
716-831-3206
□ 2000 Teall Avenue, Suite #204 • Syracuse, NY 13206
315-472-1339
□ 2404 Whitney Avenue, 2nd Floor • Hamden, CT 06518
203-821-7050

Empowering Communities. Advocating Solutions.

August 4, 2015

Meghan Quinn
Programs & Projects, Management Division
US Army Corp of Engineers, NE District
696 Virginia Rd
Concord, MA 01742-2751

RE: *Comment Period Extension Request for 120 days for the Draft Dredged Material Management Plan & the Draft Programmatic Environmental Impact Statement for Long Island Sound. Public Hearing dates rescheduled.*

Dear Ms. Quinn,

Citizens Campaign for the Environment is a not-for profit grassroots environmental organization working to protect NY & CT's land, air, and water resources. We are active members of the Long Island Sound Study's Citizen Advisory Committee and have participated in numerous dredged material workgroup meetings.

We are writing to you with two important requests:

1. CCE is requesting that you extend the comment period for the ***Draft Dredged Material Management Plan (DMMP) & the Draft Programmatic Environmental Impact Statement (DPEIS) for Long Island Sound (LIS)*** to 120 days.

The preparation and development of this important document has taken ten years and is a DMMP for all of Long Island Sound. The proposed 30 day comment period is wholly inadequate. The documents, slated to be released on August 17th, will determine long term disposal options for dredged material for the next 20 years in an estuary of national significance. Due, to the serious nature of this planning process and it is critical that members of the public have the necessary and adequate time to review the documents and make substantive comments.

2. **CCE also requests that the public hearings currently scheduled for New York and Connecticut are rescheduled to October or additional hearings are scheduled in October to supplement the August hearings.** Public hearing dates slated for the end of August do not allow for meaningful and substantive public participation, as many members of the public take vacation at this time. In addition, the document will be released August 17th and the hearings are scheduled to for August 24th through August 27th, which allows only between 7 to 10 days for the public and stakeholder organizations to review and assess a 1000 page plan. Given, the crafting of the document has taken almost a decade; the public should not be expected to review it in ten days. Public participation in protecting the Long Island Sound has been undeniable strong and

consistent for 30 years. Our federal agencies need to provide for a meaningful opportunity to allow maximum participation in this critical planning process. By either rescheduling the hearings or providing at least 2 additional hearings in October, the Army Corp will be inclusive to all members of the public. Allowing greater public participation will ensure a more comprehensive document.

CCE looks forward to reviewing and providing comprehensive comments on both documents. We find that a 120 comment period is a reasonable time frame to allow maximum public participation to review.

Thank you for your consideration and we look forward to your response.

Sincerely,



Adrienne Esposito
Executive Director

Cc: Senator Charles Schumer
Senator Kristen Gillibrand
Congressman Steve Israel
Congressman Peter King
Congressman Lee Zeldin
NYS Senator Jack Martins
NYS Senator Carl Marcellino
NYS Senator Ken LaValle
NYS Senator John Flanagan
NYS Senator Michael Venditto
NYS Assemblyman Steve Engelbright
NYS Assemblyman Charles Lavine
NYS Assemblywoman Michele Schimmel
NYS Assemblyman Andrew Raia
NYS Assemblyman Chad Lupinacci
SC Legislator Kara Hahn
SC Legislator William Spencer
SC Legislator Al Krupski
SC Legislator Leslie Kennedy
SC Legislator Sarah Anker
Supervisor Frank Petrone
Supervisor Judy Bosworth
Supervisor Ed Romaine
Supervisor John Venditto



US Army Corps of Engineers
BUILDING STRONG®

Corps to hold public hearings in Connecticut, New York on Long Island Sound Dredged Material Management Plan

Posted 7/27/2015

Release no. 2015-065

Contact

Tim Dugan 978-318-8264
 cenaepa@usace.army.mil

CONCORD, Mass. – The U.S. Army Corps of Engineers is preparing a Draft Dredged Material Management Plan (DMMP) and Draft Programmatic Environmental Impact Statement (PEIS) for Long Island Sound and will hold public hearings Aug. 24 – 27 in Connecticut and New York to provide an overview of the reports and receive public comments.

The DMMP was requested by the Governors of Connecticut and New York in a Feb. 8, 2005 joint letter to the Chief of Engineers. The need for a DMMP also was identified by the U.S. Environmental Protection Agency's June 3, 2005 Rule that designated two of the Sound's historic open-water placement sites, the Central Long Island Sound site and the Western Long Island Sound site for continued use. The EPA's rule required preparation of a DMMP to examine alternative placement practices, with the goal of reducing or eliminating open-water placement of dredged material in the waters of Long Island Sound wherever practicable.

Long Island Sound is a large coastal estuary located between Long Island, New York on the south, and the shores of New York, Connecticut and southwestern Rhode Island on the north. This study included adjacent waters including Block Island Sound, Little Narragansett Bay, Fishers Island Sound, Peconic Bay and Gardiners Bay. A total of nearly 240 harbors, coves, bays and rivers supporting various levels of navigational access are located along these shores.

The Corps is responsible for maintaining 52 Federal Navigation Projects (FNPs) in Long Island Sound and adjacent waters that include general navigation features requiring periodic maintenance dredging. These include 31 projects in Connecticut, 17 in New York and four in Rhode Island.

The DMMP examines the need for dredging, the history of dredging and dredged material placement, and current beneficial use practices. The DMMP identifies and assesses alternatives for future dredged material placement and beneficial use, identifies the likely Federal Base Plans (least cost environmentally acceptable plan) for future Federal dredging activities, and recommends further action to be taken by individual projects as they come up for their next maintenance cycle, or in feasibility studies for proposed project improvements.

The DMMP identifies practicable potential cost-effective and environmentally acceptable placement alternatives to meet the dredging needs of Long Island Sound's ports and harbors. Without practicable placement alternatives dredging costs will increase, fewer projects will be maintained, economic viability of projects will be reduced, and navigation dependent sectors of the regional economy will be impaired. Opportunities to beneficially use dredged material for purposes of coastal resiliency and environmental restoration and enhancement may not be realized without a DMMP. The DMMP makes specific recommendations for further interagency involvement in dredged material management, dredging data management, study of the impacts to open water placement, and supporting opportunities for beneficial use.

The DMMP and PEIS will be posted on Aug. 17, 2015 on the Corps website at: www.nae.usace.army.mil/Missions/ProjectsTopics/LongIslandSoundDMMP.aspx. The public will have until Sept. 18, 2015 to provide comments on the reports.

Two public hearings will be held in New York: on Monday, Aug. 24, 2015 in the Village Center at Port Jefferson at 101-A East Broadway in Port Jefferson, N.Y.; and on Tuesday, Aug. 25, 2015 at the Marriott Long Island at 101 James Doolittle Blvd. in Uniondale, N.Y.

Two public hearings will be held in Connecticut: on Wednesday, Aug. 26, 2015 at the University of Connecticut-Stamford at 1 University Place in Stamford, Conn.; and on Thursday, Aug. 27, 2015 at the Holiday Inn-New London at 35 Governor Winthrop Blvd. in New London, Conn.

Registration for all meetings will begin at 5:30 p.m. and the hearings will start at 6 p.m.

Public comments on the Draft DMMP or Draft PEIS should be forwarded no later than Sept. 18, 2015 to the U.S. Army Corps of Engineers, New England District, (ATTN: LIS DMMP/PEIS Program Manager Meghan Quinn), 696 Virginia Road, Concord, MA 01742-2751 or by email to: meghan.c.quinn@usace.army.mil.

From: [Habel, Mark L NAE](#)
To: [Habel, Mark L NAE](#)
Subject: FW: CTDEEP Comments on LIS DMMP Draft PEIS (UNCLASSIFIED)
Date: Thursday, July 30, 2015 3:05:23 PM
Attachments: [image003.png](#)
[CTDEEP Comments on LISDMMP draft PEIS 7-24-15.docx](#)

Classification: UNCLASSIFIED
Caveats: NONE

From: Thompson, Brian [<mailto:Brian.Thompson@ct.gov>]
Sent: Friday, July 24, 2015 5:43 PM
To: Quinn, Meghan C NAE; Keegan, Michael F NAE
Cc: Wisker, George; Sigmund, William; 'Perkins, Stephen'; Greg Capobianco (gregory.capobianco@dos.state.ny.us)
Subject: [EXTERNAL] CTDEEP Comments on LIS DMMP Draft PEIS

Mike and Meghan,

Attached are comments from George Wisker and myself regarding the Draft PEIS. Please contact George or me if you have any questions.

Regards,

Brian

Brian P. Thompson
Director
Office of Long Island Sound Programs
Bureau of Water Protection and Land Reuse
Connecticut Department of Energy and Environmental Protection
79 Elm Street, Hartford, CT 06106-5127
P: 860.424.3650 F: 860.424.4054 |E: brian.thompson@ct.gov

www.ct.gov/deep <<http://www.ct.gov/deep>>

Conserving, improving and protecting our natural resources and environment;

Ensuring a clean, affordable, reliable, and sustainable energy supply.

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Connecticut Department of Energy and Environmental Protection

Comments on Draft Programmatic Environmental Impact Statement for the Long Island Sound Dredged
Material Management Plan

July 24, 2015

- ES-10 thru 12, Environmental Impacts: In general, the potential impacts are not consistently addressed across the spectrum of alternatives. For example, the discussion of open water placement identifies potential air quality impacts from operation of dump scows. Nearly every alternatives involves the use of equipment (e.g., trucks, pump engines) that would result in air emissions, yet this potential impact is not identified for all. The same discussion identifies air emissions related to commuting vehicles from workers' traveling to and from the dredging site; again, this impact applies to every project and is actually irrelevant because it is an impact associated with the dredging operation, not the disposal. Further on in this section there is reference to the impact of salt and any leachable chemicals in dredged material that may occur with landfill placement. This same potential impact would be expected from most forms of upland use, such as manufactured soil and mine and quarry placement.
- ES-13, Infrastructure Impacts: Regarding CAD cells, it should be noted that the establishment of a CAD cell would preclude many other future use of the seabed in the area overlying the CAD cell.
- ES-16, Beneficial Impacts of Dredging and Placement of Dredged Material: In discussion of the benefits of CDF's, it is noted that these structures "may decrease wave energy and erosion, thus increasing submerged aquatic vegetation..." It is worth adding that such structures may also help to protect vulnerable shorelines from erosion, thus providing protection of infrastructure, perhaps avoiding the need for furthering hardening of shorelines. It should also be noted that additional benefits may include increased upland area available for habitat use. Finally, in the discussion of beach nourishment should note that enhanced beaches may provide increased protection of infrastructure from wave impacts, which may reduce the need for further shoreline hardening.
- Ch. 2, Section 2.1 REGULATORY ENVIRONMENT: It is unclear whether this section is intended to address both federal and non-federal projects. If the intention is to encompass non-federal projects, it should be identified that in Connecticut waters a Structures, Dredging and Fill permit is required for any placement activity waterward of the Coastal Jurisdiction Line and a Tidal Wetlands permit is required for any placement activity within a tidal wetland.
- Pg 3-27 – should add discussion of dealing with residual salt which if not removed will seriously impact usability of manufactured soil.
- Pg 4-2, last sentence, 3rd paragraph – Typo; should be "located within the **Eastern** Basin' , not Western.
- Figure 4-4 - We suggest adding the state boundary in LIS.
- Pg 5-9, FVP Information Box – 3rd paragraph reports that contaminants such as PAH are lower than originally measured in the Black Rock sediments due to active sedimentation and bioturbation. Add toxicity and bioaccumulation data on the FVP mound benthic infauna to the information presented.

- Pg 5-11, Confined Placement – Need more clarification of what confined OW disposal is vs a CAD cell; capping at CLDS could be considered confined disposal. What differentiates confined disposal from just capping or a CAD cell?
- Pg 5-65, Table 5-3 – Although it is stated in the PEIS introduction that this DMMP is for Corps projects, with possible use by non-federal projects, it would help to clarify again that MPRSA requirements are only required for all federal and non-federal projects disposing > 25K cy of sediment. As currently written in the table, all projects require biotesting, etc.

July 24, 2015

Meghan Quinn, Project Manager, LIS DMMP
U.S. Department of the Army
Corps of Engineers / New England District
Civil Works and Interagency/International Project Management Branch
696 Virginia Road
Concord, MA 01742

Re: File # O-2015-0025 – U.S. Army Corps preparation of
a Dredged Material Management Plan (DMMP) and
PEIS for the Long Island Sound (LIS) Region

Dear Ms. Quinn:

The New York State Department of State (NYSDOS) and the New York State Department of Environmental Conservation (NYS DEC) (the “NYS Agencies”) have reviewed the pre-Draft PEIS (pre-DPEIS) and NYSDOS is providing these comments on behalf of the NYS Agencies on the U.S. Army Corps of Engineers (Corps) technical review copy of the pre-DPEIS. At the outset, the NYS Agencies strongly restate their long-standing support for the goal of reducing or eliminating open water disposal so as to minimize potential impacts to marine resources of LIS.

Based on the NYS Agencies’ initial review of the pre-DPEIS, the following deficiencies are highlighted:

The Executive Summary (ES) of the pre-DPEIS is difficult to read

The impacts are not clearly presented, nor are they presented in a user-friendly format. In several areas, the “No Action Alternative” describes the designation of additional open-water sites, without any explanation of the regulatory process. NY believes that this is a shared responsibility by the Corps and EPA and any EPA efforts to designate additional sites is an “Action.” The “No Action Alternative” is also described within the ES in other areas as the existing sites sun-setting/expiring, and open-water sites no longer being available. There is no consistency throughout the PEIS for the explanation of a “No Action Alternative”.

The pre-DPEIS does not adequately address the Alternatives

The pre-DPEIS needs to provide a more comprehensive explanation as to why marsh creation, enhancement projects (including beach nourishment) and confined disposal facilities (CDF) are the only alternatives to open water disposal that include an analysis of cost effectiveness. Upland disposal, amendments, or innovative treatments are not considered or analyzed from a cost-benefit perspective. The feasible or potential alternatives need to be better identified and the discussion of these options and should be a larger focus of the pre-DPEIS.

The pre-DPEIS does not support the goal of reducing or eliminating the use of open water disposal

The DMMP’s goal to reduce or eliminate the use of open water disposal, as described in the USEPA 2005 Final Rule (40 CFR § 228.15) is quoted in a number of locations throughout the pre-draft DMMP, but the document appears to be focused primarily on establishing conditions pursuant to which LIS may continue to be used for the siting of open water waste disposal sites. The pre-DPEIS, as the supporting document for the

DMMP, does not adequately address reductions in open-water disposal and instead justifies the continued or increased use of open-water disposal sites.

There is no long-term monitoring research or impact study to confirm the effectiveness of cap structures to prevent contaminant breakthrough for the life-span design of a subaqueous cap

Subaqueous capping techniques and technologies intended to isolate disposed contaminated dredged material disposal sites have been used in LIS. NY recommends studies be conducted to provide better scientific understanding of the long-term ecological and economic impacts of premature failure and/or planned expiration of temporary containment caps used to secure permanently stored contaminated sediments at disposal sites.

The pre-DPEIS does not adequately consider the States' opportunity costs or economic losses associated with not pursuing beneficial re-use and or not addressing the potential long term economic costs of continued open water dumping

The pre-DPEIS does not include sufficient consideration of opportunity costs associated with continued reliance on open water disposal. Cost justification for LIS, as compared to other Corps regions, is missing but is necessary to fully understand regional management needs. A comparison of applicable and acceptable costs in other Corps regions should be added to the pre-DPEIS. The North Atlantic has six open water sites over six hundred miles of the Atlantic Ocean yet this DMMP/PEIS anticipates four open water sites over less than 100 miles. The costs should be justified based upon the distance traveled to open water sites in other regions (where only one open water disposal site is available such as in San Francisco Bay Deep Ocean Disposal Site, located about 55 miles off the Golden Gate Bridge).

The pre-DPEIS does not consider ecosystem resilience

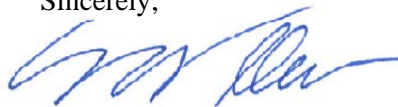
The pre-DPEIS does not provide sufficient information on the effects of continued contaminant exposures on the resiliency of the ecosystem. Numerous studies collectively demonstrate that LIS's long history of pollution, overfishing and contaminated dredged material disposal have eroded the health of the LIS over time, and have reduced its resilience capacity to deal with additional ecological stressors.

The pre-DPEIS incorrectly suggests that the Corps' compliance with the CWA and CZMA regulatory programs is optional

When a federal agency is undertaking, funding or permitting any activity subject to CZMA or CWA review, it must fully comply with these federal laws and regulations. The pre-DPEIS on pages 2-3 (2nd and 3rd paragraphs) suggests otherwise by incorrectly relegating State reviews pursuant to these statutes as advisory only. To ensure compliance with federal law, as administered by New York State, the analysis used must include an evaluation of compliance with the CWA and the CZMA, which are administered in New York by DEC and DOS, respectively. This analysis must take place prior to the application of a cost/benefit analysis.

In closing, the NYS Agencies would like to thank the Corps for the opportunity to review and comment on the pre-DPEIS and look forward to engaging with the Corps and others in cooperatively identifying and implementing solutions to the difficult and complex problems of dredged material management in LIS. We welcome any questions about our comments.

Sincerely,



Sandra Allen
Deputy Secretary of State
Office of Planning and Development

c: Robert Klee, Commissioner, CT DEEP
Brigadier Gen. William Graham Army Corps of Engineers NAD
Col. David Caldwell, Army Corps of Engineers NY District
Joseph Vietri, NAD
Curt Spaulding, EPA Region 1
Judith Enck, EPA Region 2
Jeff Payne, PhD., NOAA
R. Randall Schneider, NOAA
Glynnis Roberts, NOAA
Lou Chiarella, NOAA

From: [Street, Jennifer \(DOS\)](#)
To: [Quinn, Meghan C NAE](#); [Keegan, Michael F NAE](#)
Cc: [Habel, Mark L NAE](#); [Gathen, Kari \(DOS\)](#)
Subject: [EXTERNAL] RE: DMMP Comments (UNCLASSIFIED)
Date: Friday, July 24, 2015 10:46:58 AM

Hi Meg,

I am still waiting to get the comments on the draft PEIS back so that I can send them over to you guys. I will forward them as soon as I get them. Last I was told is that DEC was adding their comments and would get it back to us.

As per our emails yesterday though, I found the language we had proposed for the DMMP Chapter 1, section 1.3.4 :

The New York Coastal Management Program (NYCMP) was approved by NOAA in 1982 and is a comprehensive program that incorporates State-wide, regional Long Island Sound, and Local Waterfront Revitalization Programs (LWRP) enforceable coastal policies to conduct federal consistency reviews in accordance with 15 CFR Part 930.

The NYCMP provides for the review of federal actions and activities, utilizing program coordination at all levels of government, for consistency with coastal policies concerning Development (land use, coastal uses, maritime uses, commercial shipping); Fish and Wildlife (habitat protection, recreational and commercial fisheries, ecosystem resiliency); Flooding and Erosion (climate change, erosion, resilience, land use planning); Public Access and Recreation (public access, underwater lands, recreational boating, navigation); Historic, Scenic and Agricultural (socioeconomic, historic and archeologic preservation, visual impacts); Energy and Ice Management (energy generation and transmission); and Water Quality, Air Quality and Wetlands Protection (ecosystem services, watershed management, water quality compliance).

The Long Island Sound CMP is the regional refinement of the NYCMP for activities proposed within or affecting Long Island Sound and the 13 coastal policies of the LIS CMP are the applicable coastal policies for reviewing dredged material disposal projects in Long Island Sound. The coastal policies of an LWRP are used to review a project for consistency if the activity will occur within or affecting that LWRP. New York also has interstate consistency review (15 CFR part 930 subpart I) over federal agency actions and activities occurring in Connecticut state waters up to the -20' bathymetric mark and within the boundaries of Long Island Sound; which include actions and activities within the jurisdiction of the Marine Protection, Research and Sanctuaries Act (MPRSA) (33 USC 1401 et seq.) and the Clean Water Act (CWA) (33 USC 1344 et seq.).

Thanks,

Jen

-----Original Message-----

From: Quinn, Meghan C NAE [<mailto:Meghan.C.Quinn@usace.army.mil>]
Sent: Thursday, July 23, 2015 12:09 PM
To: Street, Jennifer (DOS); Keegan, Michael F NAE
Cc: mark.l.habel@usace.army.mil
Subject: RE: DMMP Comments (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Thanks Jen!

Meg

Meghan Quinn, P.E.

Project Manager
USACE - NAE - PP - C | Concord, MA
(978)318-8179 (o) | (978)854-3869 (c)
meghan.c.quinn@usace.army.mil

-----Original Message-----

From: Street, Jennifer (DOS) [<mailto:Jennifer.Street@dos.ny.gov>]
Sent: Thursday, July 23, 2015 11:55 AM
To: Quinn, Meghan C NAE; Keegan, Michael F NAE
Cc: Habel, Mark L NAE
Subject: [EXTERNAL] RE: DMMP Comments (UNCLASSIFIED)

Yes we had planned to add a section that you could just cut and paste but once they decided to do a joint agency letter, that came out. I will check here to see if anyone has the language that was proposed to be drafted for that section to send over for you guys.

-----Original Message-----

From: Quinn, Meghan C NAE [<mailto:Meghan.C.Quinn@usace.army.mil>]
Sent: Thursday, July 23, 2015 10:47 AM
To: Street, Jennifer (DOS); Keegan, Michael F NAE
Cc: mark.l.habel@usace.army.mil
Subject: RE: DMMP Comments (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Jen,

Thank you for your comments.

Regarding the last comment in the letter (NY CZM): In the DMMP Chapter 1, section 1.3.4, the CT and NY CZM programs are outlined. Is DOS planning on submitting any further revised text covering their CZM program? Otherwise, the more general Federal program requirement statements are all we have.

On our phone call July 10th, you indicated that DOS may supply text for us to add in relation to NY CZM.

Please let me know.

Thanks!

Meg

Meghan Quinn, P.E.

Project Manager
USACE - NAE - PP - C | Concord, MA
(978)318-8179 (o) | (978)854-3869 (c)
meghan.c.quinn@usace.army.mil

-----Original Message-----

From: Street, Jennifer (DOS) [<mailto:Jennifer.Street@dos.ny.gov>]
Sent: Friday, July 10, 2015 4:52 PM



**US Army Corps
of Engineers**
New England District

696 Virginia Road
Concord, MA 01742-2751

Public Notice

In Reply Refer to: Meghan Quinn
meghan.c.quinn@usace.army.mil

Programs & Project
Management Division

Date: July 23, 2015

Comment Period Closes: September 18, 2015

The U.S. Army Corps of Engineers (USACE) has prepared a Draft Dredged Material Management Plan (DMMP) and Draft Programmatic Environmental Impact Statement (PEIS) for Long Island Sound. The DMMP was requested by the Governors of Connecticut and New York, in their letter of February 8, 2005 to the Chief of Engineers. The need for a DMMP was also identified by the U.S. Environmental Protection Agency's (EPA) June 3, 2005 Rule that designated two of the Sound's historic open-water placement sites, the Central Long Island Sound and Western Long Island Sound Sites (CLDS and WLDS) for continued use. The EPA's rule required preparation of a DMMP to examine alternative placement practices, with the goal of reducing or eliminating open-water placement of dredged material in the waters of Long Island Sound wherever practicable.

USACE is responsible for maintaining 52 Federal Navigation Projects (FNP) in Long Island Sound (LIS) and adjacent waters that include dredged general navigation features (channels, anchorages, and turning basins) requiring periodic maintenance dredging. These include 31 projects in Connecticut, 17 in New York and four in Rhode Island. Dredging is necessary for the continued maintenance, and occasional improvement of these harbors to maintain safe navigation. Other Federal agencies, including the U.S. Navy, U.S. Coast Guard, and the Maritime Administration, operate facilities around Long Island Sound requiring navigational access.

Historically, most dredged material in the region was placed in open water sites in LIS. Even today most dredged material is found suitable for open water placement following extensive physical, chemical and biological testing. Where feasible, beneficial uses such as beach renourishment have also been used. However, over the past 30 years Federal and state agencies have increased their efforts to find practicable alternatives to open water placement in LIS. This DMMP examines the need for dredging, the history of dredging and dredged material placement, and current beneficial use practices. The DMMP identifies and assesses alternatives for future dredged material placement and beneficial use, identifies the likely Federal Base Plans (least cost environmentally acceptable plan) for future Federal dredging activities, and recommends further action to be taken by individual projects as they come up for their next maintenance cycle, or in feasibility studies for proposed project improvements.

Long Island Sound is a large coastal estuary located between Long Island, New York on the south, and the shores of New York, Connecticut and southwestern Rhode Island on the north. This study included adjacent waters including Block Island Sound, Little Narragansett Bay, Fishers Island Sound, Peconic Bay and Gardiners Bay. A total of nearly 240 harbors, coves, bays and rivers supporting various levels of navigational access are located along these shores.

The DMMP identifies practicable potential cost-effective and environmentally acceptable placement alternatives to meet the dredging needs of LIS's ports and harbors. Without practicable placement alternatives dredging costs will increase, fewer projects will be maintained, economic viability of projects will be reduced, and navigation dependent sectors of the regional economy will be impaired. Opportunities to beneficially use dredged material for purposes of coastal resiliency and environmental restoration and enhancement may not be realized without a DMMP.

The DMMP makes specific recommendations for further interagency involvement in dredged material management, dredging data management, study of the impacts of open water placement, and supporting opportunities for beneficial use. In summary, the several recommendations are as follows:

- The Long Island Sound Regional Dredging Team (RDT) established for this DMMP should be continued, with its geographic range expanded to include the entire Sound. The RDT should also be used by its member agencies to put forth, discuss and examine means of funding and implementing alternatives to open water placement with a focus on beneficial use.
- As Federal projects are funded for future study, design and construction the DMMP should be consulted as to the likely Federal Base Plan and alternatives. Each project should examine placement alternatives with specificity to determine which method should be recommended considering engineering feasibility, cost-effectiveness, any non-economic benefits, the willingness and capability of non-Federal sponsors to meet their responsibilities, and other aspects of practicability.
- A means of collecting, reporting on and maintaining information on all dredging and dredged material placement activities in Long Island Sound should be implemented to serve as a regional tracking system for dredged material, and provide examples of real-world application of placement alternatives.
- Federal and state agencies should target data collection and studies to better address the question of the long-term impacts and acceptability of past and continued open water placement of dredged materials in Long Island Sound. Closer inspection may yield a better understanding of the health of the Sound and impacts at the active and historic placement sites.
- The states should make efforts to examine the opportunities for beneficial use identified in this study, discuss and evaluate those projects, prioritize them according to the states willingness and capability to approve and implement, and work with the USACE to determine what opportunities for Federal participation may exist. The states and the USACE should consider opportunities for beneficial use of parent materials removed in future major improvement dredging projects.

Please mail your comments so that they will be received in Concord, MA on or before September 18, 2015. Address written comments to:

Meghan Quinn
LIS DMMP/PEIS Project Manager
Corps of Engineers, New England District
696 Virginia Road
Concord, MA 01742-2751

or email: Meghan.C.Quinn@usace.army.mil

In addition to, or in lieu of, sending written comments, you are invited to attend one of our public hearings. The public hearings dates and locations are:

Monday - **August 24, 2015**
Village Center at Port Jefferson
101-A East Broadway
Port Jefferson, NY 11777

Registration begins at 5:30 p.m.
Hearing to begin at 6:00 p.m.

Tuesday - **August 25, 2015**
Marriot Long Island
101 James Doolittle Blvd
Uniondale, NY 11553

Registration begins at 5:30 p.m.
Hearing to begin at 6:00p.m.

Wednesday - **August 26, 2015**
University of Connecticut, Stamford
1 University Place,
Stamford, CT 06901

Registration begins at 5:30 p.m.
Hearing to begin at 6:00 p.m.

Thursday - **August 27, 2015**
Holiday Inn New London
35 Governor Winthrop Blvd
New London, CT 06320

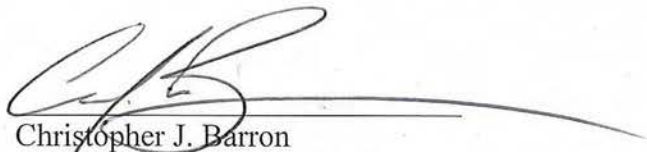
Registration begins at 5:30 p.m.
Hearing to begin at 6:00 p.m.

All interested federal, state and local agencies, interested private and public organizations, and individuals are invited to attend. Persons wishing to provide oral comments are asked to register prior to the start of the hearing. Transcripts of the meetings will be prepared. The hearing procedures are available upon request. After these comments are reviewed, significant new issues are investigated, and modifications are made, a Final DMMP/PEIS will be published and distributed. The Final DMMP/PEIS will contain the Corps responses to comments received on the Draft PEIS.

The draft DMMP and PEIS are available on our web site at:
<http://www.nae.usace.army.mil/Missions/ProjectsTopics/LongIslandSoundDMMP.aspx>

24 JUL 2015

Date



Christopher J. Barron
Colonel, Corps of Engineers
District Engineer

From: [Christopher Boelke - NOAA Federal](#)
To: [Randall, Todd A NAE](#)
Subject: [EXTERNAL] Long Island Sound PEIS
Date: Wednesday, July 22, 2015 11:22:41 AM

Todd - Good to talk to you. I think the document provides a very good overview of resources in the Sound and potential impacts of various alternatives. As we discussed, and was stated in the document, each individual project or action will require an individual NEPA document and EFH consultation.

1) In section 8.3 "EFH consultation" - 2nd paragraph should discuss more about the consultation process. For each site-specific project, and individual EFH consultation will occur between the Corps and NMFS. This includes the preparation of an EFH assessment and will include EFH conservation recommendations by NMFS to avoid and minimize any adverse impacts to EFH.

2) Section 8.5 #8 - First word should be Consultation, not coordination

3) Table 4-22 in Affected environment - You have shortnose sturgeon and Atlantic sturgeon in "other finfish species" They should be under threatened and endangered.

Let me know if you want to discuss.

Chris

--

Christopher Boelke
New England Field Office Supervisor

Habitat Conservation Division

Greater Atlantic Region

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<https://lh3.googleusercontent.com/g1N3SaXB9jgdWErNU-AYziYT0hEdk0NuY_4vh1ZPI_jUNFff8THgzxAiLrgHdINagzwwg2x-lqzK01dZ9XWV5KcgikKauB4x11yrHuY3erZCS>

From: [Habel, Mark L NAE](#)
To: [Habel, Mark L NAE](#)
Subject: FW: [EXTERNAL] RE: LIS DMMP/PEIS Teleconference (7/10) Schedule (UNCLASSIFIED)
Date: Thursday, July 30, 2015 3:18:08 PM

Classification: UNCLASSIFIED
Caveats: NONE

-----Original Message-----

From: Jeff Willis [<mailto:jwillis@crmc.ri.gov>]
Sent: Friday, July 10, 2015 12:07 PM
To: Quinn, Meghan C NAE
Subject: [EXTERNAL] RE: LIS DMMP/PEIS Teleconference (7/10) Schedule (UNCLASSIFIED)

Meghan - PEIS comments follow:

Pg 4-182 – Last paragraph of the section: Beneficial Use | Nearshore Bar/Berm Placement

One of the berms in Rhode Island (384) is located within 1 mi of the Coastal Salt Ponds Shellfish Management Area in Winnapaug Pond. Any activities at this location would need to be coordinated with RIDEM and the RI CRMC. Comment: any and all work in, on or over the tidal waters of the state is the primary regulatory responsibility of the RI CRMC. All of the coastal lagoons (ie: salt ponds) are under the jurisdiction of the RI CRMC.

Pg 4-183 – Last paragraph of the section: Beneficial Use | Beach Nourishment

One of the beaches in Rhode Island (384) is located within 1 mi of the Coastal Salt Ponds Shellfish Management Area in Winnapaug Pond. Any activities at this location would need to be coordinated with RIDEM and the RI CRMC.
Same comment as above.

Pg 4-201 - Whales

Comment: The RI CRMC's Ocean Special Area Management Plan contains a great deal of information on Whales and marine mammals. Please link to http://www.crmc.ri.gov/samp_ocean.html and open Chapter 2
<http://www.crmc.ri.gov/samp_ocean.html%20and%20open%20Chapter%202> , specifically Section 250.4 et. seq.

Pg 4-298 – Figure 4-73

Comment: please note that there are several aquaculture operations located in all of the coastal lagoons (ie: salt ponds) within the study area. Site 384 (Misquamicut Beach) is the barrier to Winnapaug Pond, which contains a 3+ acre oyster farm.

Pg 8-1 – 1st paragraph of Agency Coordination and Compliance

The NAE of USACE's North Atlantic Division (NAD) is the lead agency for the Long Island Sound DMMP. The NAE and USACE-NAN are developing the DMMP in coordination with EPA Regions 1 and 2 and NOAA; the New York state agencies NYSDOS and NYSDEC; the Connecticut state agencies CTDEEP and CTDOT; and the Rhode Island regulatory and management agency RICRMC. As the lead agency, the USACE has the primary responsibility of preparing the Draft and Final Long Island Sound DMMP and PEIS.

And, as I mentioned on the call, RI has a statutory provision for all dredged material to be disposed of beneficially (if suitable) at 46-23-6 et. seq. If a narrative statement can be made for that to better explain this state-specific disposal option policy for RI waters that would be helpful.

Thanks, Jeff

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DEPARTMENT OF STATE**

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July 10, 2015

Meghan Quinn
Project Manager, LIS DMMP
U.S. Department of the Army
Corps of Engineers / New England District
Civil Works and Interagency / International Project Management Branch
696 Virginia Road
Concord, MA 01742

Re: File # O-2015-0025 – U.S. Army
Corps preparation of a Dredged
Material Management Plan (DMMP) for the
Long Island Sound (LIS) Region

Dear Ms. Quinn:

The New York State Department of State and the New York State Department of Environmental Conservation (jointly referred to here as "NYS Agencies") have reviewed and jointly provide these comments on the U.S. Army Corps of Engineers (Corps) technical review copy of the draft Long Island Sound Dredged Material Management Plan ("pre-draft DMMP"). At the outset, the NYS Agencies restate our long-standing support for the goal of reducing or eliminating open water disposal so as to minimize potential impacts to marine resources of Long Island Sound (LIS).

Based on the NYS Agencies' review of the pre-draft DMMP, the State Agency comments are as follows:

The pre-draft DMMP does not achieve the goal of reducing or eliminating the use of open water disposal

Although the goal to reduce or eliminate the use of open water disposal, as described in the USEPA 2005 Final Rule (40 CFR § 228.15), is quoted in a number of locations throughout the pre-draft DMMP, the document appears to be focused primarily on establishing conditions pursuant to which LIS may continue to be used under the current status quo as an open water waste disposal facility. The Corps' base plans identified for each of the Federal Navigation Projects (FNPs) and suggested placement options for non-federal projects (in Section 5 of the pre-draft DMMP) continue to be open-water disposal, with few exceptions and identified alternatives, and are based solely on the assumption that all other options are too costly to be practicable for use in



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Environmental
Conservation

Department
of State

FNPs. Of specific concern is the plan to continue to dispose up to 80% of the dredged materials at disposal sites in LIS over the next 30 years, which represents less than a 4% reduction in the amount of dredged materials that are currently disposed of in LIS.

The pre-draft DMMP improperly assumes the New London Disposal Site (NLDS) and Cornfield Shoals Disposal Site (CSDS) will be available as designated open water disposal options beyond 2016

The pre-draft DMMP assumes the availability of NLDS and CSDS as designated open water disposal options pursuant to Ocean Dumping Act § 102; however, these two sites have not been designated as such by the Environmental Protection Agency (EPA). Until an SGEIS is completed, these sites may not be relied upon in the calculation of a base plan for any of the federal navigation projects (FNPs). The Corps' reliance on the use of these sites over the next 30 years as a management tool for open water disposal does not meet Engineering Regulation (ER) 1105-2-100, which requires that the DMMP developed to manage dredged material disposal for FNPs for the next 20 years (here 30 years) be attainable.

The pre-draft DMMP includes insufficient baseline information and inadequate monitoring to address information gaps

At the onset of the DMMP process, participating agencies were informed that existing data gaps in the DMMP development process would be identified and that additional studies would be undertaken to fill those gaps. While some of these gaps have been identified and filled in the pre-draft DMMP, many others were not addressed and have not been filled as promised.

The NYS Agencies are aware that the Corps routinely undertakes sediment budgets to support navigation and water quality studies; however, despite numerous discussions and email correspondence between New York and the Corps regarding this request over the past several years, no such studies have been undertaken.

The pre-draft DMMP does not provide an adequate cost/benefit analysis

The NYS Agencies indicate that the cost/benefit analysis in the pre-draft DMMP is insufficient. The pre-draft DMMP needs to address how the base plan meets the environmental standards of all applicable environmental laws, including consistency with State coastal policies. The current procedure for the analysis of alternatives used by the Corps is flawed because all practicable alternatives must be evaluated for compliance with the applicable federal laws, including the Clean Water Act (CWA) and Coastal Zone Management Act (CZMA), prior to selection based on cost.

The pre-draft DMMP does not consider the State's opportunity cost, economic losses associated with not pursuing beneficial re-use or potential long-term economic costs of continued open water dumping.

The pre-draft DMMP does not include sufficient consideration of opportunity costs associated with continued reliance on open water disposal. For example, the permanent discarding of dredged material through open water disposal is not beneficial if another use is found to be suitable. A determination of suitability for open water disposal should also include material that is suitable for use such as fill, road surfacing, bank stabilization, storm surge protection, and land fill capping, to name a few possibilities.

The pre-draft DMMP Does Not Consider Ecosystem Resilience

The pre-draft DMMP provides insufficient information on effects on ecosystem resiliency as a stressor due to the continued contaminant exposures. Numerous studies collectively demonstrate that LIS's long history of pollution, overfishing and contaminated dredged material disposal have eroded the health of the LIS over time, thereby reducing its resilience capacity to deal with additional ecological stressors.

The pre-draft DMMP should be amended to more accurately describe the New York Coastal Management Program (NYCMP) and the role of the New York State Department of State, which administers the NYCMP, in the DMMP process

The NYCMP is a comprehensive program and incorporates Statewide, regional Long Island Sound, and Local Waterfront Revitalization Programs (LWRP) enforceable coastal policies to conduct federal consistency reviews.

Additionally, this letter also serves to notify the Corps that the development of the DMMP for New York and Connecticut waters in LIS will have reasonably foreseeable effects on uses and resources in New York's coastal area and therefore will be reviewed by the NYSDOS for consistency with the enforceable policies of New York's approved NYCMP in accordance with the federal CZMA.

In closing, the NYS Agencies would like to thank the Corps for the opportunity to review and comment on the pre-draft DMMP and looks forward to engaging with the Corps and others in cooperatively identifying and implementing solutions to the difficult and complex problems of dredged material management in LIS. We welcome any questions about our comments.

Sincerely,



Kathleen Moser
Assistant Commissioner
Office of Natural Resources



Sandra Allen, Esq.
Deputy Secretary of State
Office of Planning and Development

Specific references and data sources:

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From: [Cote, Mel](#)
To: [Quinn, Meghan C NAE](#); [Keegan, Michael F NAE](#); [Habel, Mark L NAE](#); [Randall, Todd A NAE](#)
Cc: [Perkins, Stephen](#); [Hamjian, Lynne](#); [Brochi, Jean](#); [Grimaldi, Alicia](#); [Stein, Mark](#); [Pechko, Patricia](#); [Anderson, Kate](#); [Gratz, Jeff](#); [Lobue, Charles](#)
Subject: [EXTERNAL] EPA Comments on Draft LIS DMMP
Date: Friday, July 10, 2015 4:00:02 PM
Attachments: [EPA Comments on Draft LIS DMMP 7-10-15.docx](#)
[M Stein notes on DMMP 7-10-15.docx](#)

Meghan, et al – Attached for your review and consideration are the (mostly) consolidated comments from EPA Regions 1 and 2, with an additional file containing some suggested edits from Mark Stein from our Office of Regional Counsel, since his redline-strikeout edits were not conducive to cutting and pasting into the master comment document. Please let me know if you have any questions. Thanks.

Melville P. Côté, Jr., Chief

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General

1. Overall, the DMMP is well-organized and contains most of the elements that are described in the Project Management Plan, which is the work plan for the DMMP that was referenced in the site designation rule in the restrictions section, at 40 CFR Part 228.15(b)(4)(vi)(C). That provision states that, “Completion of the DMMP means finishing the items listed in the work plan (except for any ongoing long-term studies), including the identification of alternatives to open-water disposal, and the development of procedures and standards for the use of practicable alternatives to open-water disposal.”
2. As the work plan for the DMMP, the PMP describes the DMMP goals and objectives in pages 7-9, and it should be clearly referenced throughout the DMMP as one of the guiding documents for the planning process, along with USACE regulatory requirements and guidance.
3. The one element described in the PMP that appears to be missing in the DMMP is any discussion of whether a reduction goal should be part of the DMMP recommendation. Even if setting a goal is not practical, which we believe is the case due to the extreme variability in the amounts of dredged material generated year to year, there should be some discussion of why it’s not practical.
4. The document should be more public, or user friendly. A lot of terminology that probably is unfamiliar to most people is not defined or explained. There is no history of dredged material disposal in LIS, no discussion of why dredging is necessary and what dredged material is, and no basic information or definitions of the management options that are laid out in the DMMP. The DMMP says it will examine “the alternatives to open water disposal” but doesn’t define what those potential management options may be. There should be an explanation of testing and “suitable” vs. “unsuitable,” and an explanation of how suitability is determined on a case-by-case basis depending on the proposed disposal site. Chapter 1 of the DMMP for the Port of New York and New Jersey is a good example to consider.
5. The problem statement should be about the difficulty of managing fine grained sediments, not public opposition to or disagreement with the current reliance on open water disposal. Some statements about the latter point are inappropriate for this planning document. If we want to discuss a general trend about this issue, here’s a suggestion: “Over the past 30 years, however, local groups and regulatory agencies have increased efforts to minimize open water placement of dredged material in Long Island Sound, particularly in New York waters, and to maximize the amount of dredged material that is handled by upland disposal or management methods.”
6. The document mentions but does not really elaborate on the expressed goal of “reducing or eliminating dredged material disposal in Long Island Sound.”
7. The document lacks a clear narrative that there is a “preferred plan” to the base plan. It does not give the reader a sense that the overall goal of the DMMP is to try to reduce the need for open-water disposal by increasing the beneficial use of dredged material and reducing sediment loading at its sources. While it is understood that a DMMP is a USACE planning document, there needs to be a stronger promotion of beneficial use and source reduction.

8. The document should acknowledge, upfront, that source/contaminant reduction is important to the issue of dredged material management. The reader should be directed to the appropriate section of the document (Section 4.9.2 or Appendix E) where source reduction is discussed.
9. The DMMP should acknowledge, probably in the discussion about the availability of sites in eastern Long Island Sound that mentions the closure of the NLDS and CSDS in December 2016, that EPA is in the process of developing an SEIS to evaluate the potential designation of one or more disposal sites, which may include NLDS and CSDS or portions thereof.
10. Most chapters are thorough, but some chapters have numerous references sending the reader to the PEIS for more details, making it difficult to follow. The level of detail on different topics is inconsistent, for example, between the sediment and water quality sections in Chapter 3. What was the determining factor for providing the details in the DMMP versus the PEIS.
11. The reason for changing the starting point of the 30-year planning horizon and associated dredging needs analysis from 2008-2009 to 2015 should be explained better, and in particular the reason the dredging needs estimate increased significantly. What is being included now that was not included in the 2009 assessment? Was additional information available in 2015 that was not available in 2009?
12. The DMMP also should explain why the dredging needs estimate of 52.7 million cubic yards over the next 30 years, which is an average of 1,756,666 c.y per year, is so much higher than the 402,459 c.y per year average from 2006-2014, and the 619,833 c.y. per year from 1982-2004.
13. Climate change is a significant issue that will affect both the need for dredging and the need for dredged material to nourish beaches, marshes, and other coastal features. The DMMP should discuss how sea level rise is accelerating and will gradually make harbors and navigation channels deeper and, conversely, how more extreme storm events may cause significant erosion and sedimentation, leading to more shoaling of those same harbors and navigation channels. It also should discuss, as part of the discussion of beneficial uses, how these same impacts will place an even greater premium on dredged material as a resource for shoring up our sinking shorelines.
14. "Capping" is not allowed under the Ocean Dumping Act regulations and the term should not be used in that context.

Executive Summary

Table ES-2: COW and OW should be defined in the table. Confined open water and open water. Also,

- Sandy material should always be used beneficially. It is unclear why sand from Niantic Bay or Greenport Harbor would be placed at the open water disposal sites.

- For several of the “unsuitable” projects located in the western most portion of LIS (Glen Cove Creek, Eastchester Creek, Port Chester Harbor, etc), the base plan is for in-harbor CAD cells. There are likely viable upland disposal sites for these dredging centers.

ES-2 ¶2: This paragraph states that without a DMMP dredging cost will rise resulting in fewer projects being dredged, economic viability will be reduced, the regional economy will be impaired and beneficial use opportunities will not be considered. This seems overreaching. Our regional economy will be impaired without a DMMP? The scenario portrayed assumes flat funding which may or may not occur.

ES-4: The USACE CEDEP dredging estimate program should be described a little more.

ES-5: As previously noted, suitability of sediment needs to be defined, and it should be stated clearly that the estimates of suitable and non-suitable material and material types in the DMMP are based on historic testing, some of which may be very old, and that each project still will need to go through testing to determine suitability of the material for open-water disposal. It should be made clear that “material type” is a best guess.

ES-6: As previously noted, the Executive Summary does lapse into dredging program jargon quite a lot, which can lead to a reader not understanding or misunderstanding what the document is trying to convey. For example, the term “base plan” is used frequently, starting on page 1. Sometimes it is capitalized and sometimes it isn’t. The document at pp. ES-3 and ES-5 seems to define the Federal Base Plan as the “least costly environmentally acceptable option.” I think it could be better defined, however, including citing to the authorities that lead to the stated definition.

ES-6: Text says the following table includes “the identified likely base plan, AND the most likely alternatives identified for each [project] (emphasis added). But Table ES-2 does not have a column for “likely alternatives.” Likely because the sentence was cut and pasted from Ch 6, p 6-1 where it is indeed followed by a table that includes other lower cost and non-open water alternatives. Ex Summary sentence should be edited to end after “likely base plan.”

ES-5 and 9: The breakdown of what is considered to be fines vs. sand should be explained.

ES-9: the second full paragraph on the page states that “suitable fine grained materials” have limited cost-effective options for disposal/management options. It also says that, “Other than CDF construction, alternatives to open water placement of fine-grained materials are limited to marsh creation and enhancement projects.” Could add here some sort of brief explanation of why this is so.

The fifth paragraph on the same page states, “USACE authorities that could be applied to authorize ~~demonstrate~~ Federal participation in non-base plan alternatives in support of ecosystem restoration, hurricane and storm damage reduction, flood risk management, shore damage mitigation, and the general authority for regional sediment management are all outlined in the DMMP.” It seems to me that the word “authorize” fits better here.

Page ES-10: One of the recommendations is that additional target data collection and studies be conducted to better address the question of long-term impacts and acceptability of past and

continued open water placement. Isn't this captured through the ongoing DAMOS program? If additional work is necessary, will USACE fund DAMOS?

ES-10, 4th paragraph from the top of page: In the middle of the paragraph, it states that, "As this is the key point of disagreement between ~~the agencies and states~~ certain of the interested parties, closer inspection may yield a better understanding of the matter." Remember that CT is a state and does not disagree with EPA on the policies in question.

Chapter 1 - Introduction

1-7 to 1-8: The text includes what we think is an incorrect statement that should be corrected. It says that, "Barring further legislation, open water placement of dredged material in LIS will cease in 2016 without completion of a DMMP, and amendment of the site restrictions by EPA." This mixes up the issues facing the eastern Sound sites with the issues facing the CLIS and WLIS sites. We don't believe there is anything in the law or regulations that would prevent the Corps from "selecting" a new site for use under its site selection authority.

1-1 ¶4: It is stated that the intent of the DMMP is to examine possible alternatives to open water placement and to determine the base plan which meets the Federal Standard for Federal maintenance dredging, identify practicable alternatives to the base plan, determine what programs could be used to implement alternatives and to provide non-Federal interests with an inventory of potential alternatives to consider in planning disposal. This statement fails to note that the EPA rule for designating CLDS and WLDS states that "the DMMP for LIS will include the identification of alternatives to open water disposal, so as to reduce, wherever practicable the open-water disposal of dredged material." While this goal is mentioned on Page 1-5, we believe it should be included on Page 1-1 where the intent of the DMMP is discussed.

1-5: The discussion of Preliminary Assessment findings is confusing. It states that the PA found a dredging need of 1-1.5 million c.y. annually but then says that estimate did not include a number of items. So what did the PA include and how was the estimate developed?

1-6 (Prior Federal EIS') – All of the cited material need to have published dates.

1-7 ¶1: (Purpose and Need) – in addition to providing more certainty for disposal options, wasn't it a goal of the DMMP to develop alternatives that might reduce or eliminate open water disposal where practicable?

1-8 ¶ 3 (Navigation need) – needs to state that estimates of types of materials are based on historical results and may not reflect future results. This is a best guess.

1-12, bottom paragraph, 6th line: "related to the type of material to be **placement** (should be placed), time of placement, and other matters."

1-16. Is there a reason that NY's Coastal Zone Consistency program is described in very general terms compared with the more specific details (e.g., ref to state laws) for CT in the paragraph above? (We understand from the call today that NYS COS will be submitting a more detailed description for use in the DMMP.)

Chapter 2 – Existing Federal Navigation Projects

No comments.

Chapter 3 – Existing Conditions

General: Detail is included on the water quality but the reader is referred to the PSEIS to understand information on other data (i.e. sediment quality). Not sure why some chapters are included in DMMP in detail and other areas are in detail in the PSEIS. This is awkward and should be edited.

3-4: Data is mentioned from the National Coastal Assessment but the period covered is up to 2010 and is the only source referenced. Do you have any recent data from the literature update that would cover the last few years? CT DEEP has a good database of water quality data going back to 1990 including information on low-dissolved oxygen (hypoxia) conditions in the western basin.

3-5: Benthic invertebrates are discussed in general but their use in management and monitoring of Dredged material disposal sites is not mentioned at all and should be discussed.

3-6: Lobster is mentioned as an important recreational fishery but the lobster mortality and declining fishery is not mentioned. The source for the recreational fishing inventory is from before 2004 as part of the LIS EIS. For the DMMP you have more recent data (from 2009) that should be used or referenced. The recent Long Island Sound science synthesis book has good information on this issue as well as an assessment of the impact of dredging and dredged material in general that would be a useful reference.

Chapter 4 – Formulation of Alternatives

4-1 (Statement of the Problem) – this entire section should be reworked and simplified. There are two major problems:

- The material dredged in LIS is primarily fine-grained. Additionally, some of the materials may contain contaminants of concern. These characteristics have raised concern about disposal particularly open water disposal.
- There are a limited number of practicable placement options for the aforementioned dredged material.

EPA does not consider the State of New York and local interest groups expressed concerns with respect to open water disposal to be part of the problem.

4-3: (Planning Opportunities and Constraints) – include Indian Nations/Tribes in the list of groups to engage in the development of placement options.

4-4: Listed as a constraint is the states having different policies and opinions on dredged material placement. Connecticut supports open water disposal while NY opposes open water disposal however, NY doesn't seem to oppose open water disposal at CLDS or WLDS. This needs further explanation as to why this is a DMMP constraint.

4-6: The next to last bullet says one of the plan steps was to “Develop recommended processes and procedures for future Federal and non-Federal dredged material placement alternatives evaluation to be followed in the NEPA analysis for projects.” Where do these recommended processes and procedures appear?

4-10: Should Table 4-1 be entitled “Summary of all **FUTURE** Dredging Center Activity?”

4-18, Sec 4.9.3, 1st paragraph: Includes the following sentence which reads awkwardly: “However, as several decades of research and monitoring through the DAMOS program have shown, no significant impact from the unconfined open water placement of dredged material meeting the requirements and criteria of established sampling and testing protocols, these sites must be considered as alternatives for dredged material placement.” Do they mean to say that “no significant impact” has been shown, thus “these sites must be considered”? If yes, that conclusion is missing? If that’s not the point, the transition to the last clause is missing something.

4-18 (Open water placement alternatives in LIS) – It may be useful to the reader to explain, up front, the differences between a “designed site” and a “selected site.”

4-24: (Historic Area Remediation Site) – The statement “The HARS is the only available for placement of material that meets the definition remediation capping material for this ocean site.” The inclusion of the word “capping” is incorrect; capping is prohibited under MPRSA. Material for Remediation is defined in the HARS final rule preamble as “uncontaminated dredged material (i.e., dredged material that meets current Category I Standards and will not cause significant undesirable effects including through bioaccumulation).”

4-34 ¶ 2: (CAD cells) – an additional issue associated with CAD cells is a disposal site for the material excavated to build the CAD cell. This is particularly important if the upper portions of the sediment to be excavated for the cell are not “clean.” It may be necessary to find a disposal alternative for some of the sediments being excavated to create the cell. In-harbor CAD cells are generally excavated in close proximity to the unsuitable materials.

4-34: For Confined Open Water Sites (COW), this discussion seemed inadequate for such a large part of the overall plan. Is there additional information available on the Morris Cove and Sherwood Island COW’s? Are their presently environmental concerns associated with these depressions? Etc.

4-36 ¶1: Clarify that MPRSA jurisdiction pertains only to the placement of dredged materials within LIS.

4-54 ¶1: Remove the reference to “capping” at the HARS; capping is prohibited under MPRSA. Material for Remediation is defined in the HARS final rule preamble as “uncontaminated dredged material (i.e., dredged material that meets current Category I Standards and will not cause significant undesirable effects including through bioaccumulation).”

Chapter 5 – Formulation and Evaluation of Dredged Material Management Plans by Dredging Center

General comment – there should be a discussion of how cost per cubic yard are determined. What is included in the costs and what are the factors that most influence cost. In addition, if actual historic costs are the basis for future costs, those should be noted.

Should there be a discussion of an environmentally preferred plan; one that is developed without regard to cost?

5-11: (Block Island Harbor of Refuge) – for suitable fines, the cost/cy seems extraordinarily high. Is this due to the small volume (2200cy) and does this include dredging, mobilization and demobilization costs?

Chapter 6 – Conclusions

6-1, Table 6-1: The column entitled “Other lower cost and non-open water Alternatives” seems to be describing the “preferred plan”; would it be more descriptive to entitle this column “preferred plan” to convey a goal of using dredged material in a beneficial fashion where practicable?

6-1, Table 6-1: Big picture process and programmatic information should be included to explain what this DMMP is, how it will be used, specifically more detail on Table 6.1. More importantly, the reader should understand that just because an LCEA is listed – each project will have to go through an evaluation first before a true determination of suitability and grain size is determined.

6-1, Table 6-1: For sites that are “pits” like the COW sites and Morris Cove, there is not enough information or data to support those locations as “environmentally acceptable” and should be listed separately as future locations that could serve as Possible in water beneficial use sites once the feasibility studies have been completed.

6-1, Table 6-1: Lists CT landfills as 3% increase in cost but there are no CT landfills available at this time, the document should mention that at the beginning of the DMMP study, there were 3 landfills which have since closed. Also,

- Change “fines” going to CSDS.
- Remove use of CSDS as a back-up for NLDS.
- Remove CSDS as an option for Thames River material.

6-9: (CAD Cells as Base Plans for Unsuitable Materials) - it is stated “construction of CAD cells beneath harbor bottoms typically requires removal of large quantities of clean parent glacial materials, which themselves make excellent capping materials for open water sites, or in other beneficial applications.” CAD cells are usually constructed near the project generating the unsuitable materials; the DMMP should address the issue of parent material (top layers) that may, itself, be unsuitable and require upland disposal as was the case in the Newark Bay, NJ CAD cells.

6-13, Table 6-13: – the predominant base plan for all fine-grain materials remains open water disposal. This should clearly be stated.

6-13: Define LERRD.

6-15, top paragraph: Consider editing sentence, “to be compliant with NEPA, USACE developed the PEIS **and provided opportunities for public participation,**” since NEPA also refers to the public process.

Chapter 7 – Recommendations

General: This chapter describes the procedures and standards required by the rule and PMP, and should clearly state that as a subtitle (e.g., Recommendations – Procedures and Standards) or in

the introductory paragraph, and restructured to make the RDT the central component with the other procedures either the RDT's direct responsibility or linked in some other way, as follows. Consider repackaging the recommendations to better address the establishment of "procedures and standards for the use of practicable alternatives to open-water disposal," as follows.

The procedures look like having the RDT (7.2), tracking projects (7.1) and supporting opportunities for beneficial use (7.5) and dredged parent materials (7.4). I'm not quite sure that the examination of long-term impacts of open water placement (7.3) is a procedure. It's arguably about "standards," and also could reside in a section entitled "Ongoing Studies" as envisioned in the rule and PMP. The rest of the "standards" flow from all the detailed comparisons that have been described for each dredging center.

Procedures: (repackaging of most of the recommendations and a few more things)

Long-term commitment to robust, Sound wide RDT (7.2, 1st and 2nd bullets) charged to reduce wherever practicable the open-water disposal of dredged material, through:

- Review projects and make recommendations (7.2) to help ensure that practicable alternatives described in the DMMP for each harbor have been thoroughly evaluated and are used, whenever practicable.
- Develop strategies for making BU and other non-open water alternative more affordable/cost-effective (7.2, 3rd and 4th bullets)
- Further develop, where practical, opportunities for Confined Disposal Facilities
- Track dredge placements (7.1)
- Organize (or delegate to another group like LISS/Sea Grants) a scientific forum to review state of the science on long-term impacts of open-water placement and make recommendations (e.g., monitoring, best practices) (7.3)
- Get input from others (e.g., Working Group, LISS TAC and CAC), CT (state, local) & NY (state, county, local) actions that can support a successful RDT
- Support opportunities for beneficial use (7.5) – set priorities, develop sources for cost share.

Consider adding a periodic review and, if necessary, update of the DMMP, as stated in section 2.4 of the PMP (p. 9).

Standards: The suite of alternatives identified in the DMMP (or any new ones that may arise in the future) for each harbor.

It seems that there should be a description of a "preferred plan;" one that, if practicable, would be implemented.

It seems as if this section would be a good place to restate the goal of source reduction. A goal of dredged material management should be the reduction of sediments and contaminant inputs.

7-1: It would be helpful to include a description of "environmentally acceptable alternative" and make sure it is clear to the reader that the USACE choice would have to include both the least costly AND environmentally acceptable alternative and that you would do a cost benefit analysis (the process should be provided and summarized again in this chapter).

7-1: Consider going a step further in Chapter 7 on the tracking of where the dredged material was disposed of. It's good to highlight the need for a tracking system, but then it says someone should take the lead and it is short on details. What about tasking the RDT or its member agencies with developing a tracking system, establishing a lead on who will host it, and seek commitments to enter data. Even if it doesn't make it into the DMMP, perhaps it should be identified as one of the "ongoing studies" referenced in the final rule and PMP, and EPA will consider such a commitment for the final rule removing the conditions.

7-1: There needs to be a transition paragraph that leads to the recommendations that follow the restatements of the base plans for the three different material types. I would be particularly good if it made explicit reference to the regulatory language about "the development of procedures and standards for the use of practicable alternatives to open-water disposal." The Corps needs to clearly discharge this responsibility. The closest thing to a procedure or process is the almost default to the NEPA process for each project referenced in the first bullet in section 7.6.

7-1. I would strongly suggest that the Tracking System section follow the RDT recommendation. I would suggest that the section say that the RDT should determine/recommend which agency should take the lead in assembling the data. There really should be a single cloud based system all the permitting agencies would agree to feed.

7-2. As noted above, this should be the lead recommendation – swap with 7.1.

7.2: It is not clear that the RDT would be organized and managed the same way, that information should be included in the recommendations. i.e. the USACE may recommend rotating the Chair position, etc.

7-2: (RDT) – the RDT should include, in its scope, all dredging projects in LIS not just those subject to MPRSA.

7-3: Discussion of "environmentally acceptable" is different than what the entire DMMP document says and this should be clearly articulated. The open water disposal process is an acceptable practice and the determination of whether material is "environmentally acceptable" has to be determined on a case by case basis through the regulatory process.

7-3: There is a bullet that states efforts to compare contaminant concentrations in tissues has been collected, but a larger sound wide study at heavily used historic sites like the New York city garbage dump site in western sound. Not sure why a study of this site would be helpful?

7-3: I like that they explicitly raised the need to close/narrow the technical debate about the long-term impacts of open water placement. Can the LISS and Sea Grant add to this conversation? If yes, they should be referred to. As previously noted, this could be an "ongoing study."

7-3: The Historic Placement bullet. Should be e.g., instead of i.e.,. The etc. is superfluous.

- c: Robert Klee, Commissioner, CT DEEP
Brigadier Gen. William Graham Army Corps of Engineers NAD
Col. David Caldwell, Army Corps of Engineers NY District
Joseph Vietri, NAD
Curt Spaulding, EPA Region 1
Judith Enck, EPA Region 2
Jeff Payne, PhD., NOAA
R. Randall Schneider, NOAA
Glynnis Roberts, NOAA
Lou Chiarella, NOAA



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

June 2, 2015

Project Management Division
Civil/IIS Project Management Branch

Mr. Gregory Capobianco, Director
Division of Community Resilience and Regional Programs,
Office of Planning & Development
New York Department of State
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

Dear Mr. *Greg* Capobianco,

On June 1, 2015, you were sent an email with a hyperlink that would allow you to download electronic versions of the Agency Technical Review (ATR) Draft of the Long Island Sound Dredged Material Management Plan (LIS DMMP) and accompanying appendices. The ATR Draft of the DMMP is being provided to you for review and comments by members of your agency. In addition to you, a similar email and hyperlink to the LIS DMMP documents was also provided to your agency's member(s) of the Project Development Team (PDT) as identified in the US Environmental Protection Agency Annual Report on Long Island Sound.

This DMMP is currently under review by a Corps of Engineers Agency Technical Review Team (ATR) that has not been involved in the project and will be able to provide an independent review of the documents. It was agreed at the LIS DMMP Steering Committee meeting held in March 2015 that we would provide you an opportunity to review the ATR Draft DMMP documents at the same time as the ATR team with your assurance that these documents will not be released in any form to the public. The official public release of the Draft DMMP is currently scheduled for August 2015.

As was identified in the project schedule that was provided to the Steering Committee and PDT members by email on April 3, 2015 comments are due to this office no later than July 10, 2015. This allows for a six week review period.

If you have questions or require additional information, please contact me at 978-318-8230 or Meghan Quinn, project manager, at 978-318-8179.

Sincerely,

William C. Scully, P.E.
Deputy District Engineer for Project Management



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

June 2, 2015

Project Management Division
Civil/IIS Project Management Branch

Ms. Betsey Wingfield, Chief
Bureau of Water Management
Connecticut Department of Energy & Environmental Protection
79 Elm Street, 3rd Floor
Hartford, CT 06106-5127

Betsy
Dear Ms. Wingfield,

On June 1, 2015, you were sent an email with a hyperlink that would allow you to download electronic versions of the Agency Technical Review (ATR) Draft of the Long Island Sound Dredged Material Management Plan (LIS DMMP) and accompanying appendices. The ATR Draft of the DMMP is being provided to you for review and comments by members of your agency. In addition to you, a similar email and hyperlink to the LIS DMMP documents was also provided to your agency's member(s) of the Project Development Team (PDT) as identified in the US Environmental Protection Agency Annual Report on Long Island Sound.

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Sincerely,

Bill

William C. Scully, P.E.
Deputy District Engineer for Project Management



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US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
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CONCORD MA 01742-2751

June 2, 2015

Project Management Division
Civil/IIS Project Management Branch

Mr. Ken Moraff, Director
Office of Ecosystem Protection
US Environmental Protection Agency, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Dear Mr. Moraff,

On June 1, 2015, you were sent an email with a hyperlink that would allow you to download electronic versions of the Agency Technical Review (ATR) Draft of the Long Island Sound Dredged Material Management Plan (LIS DMMP) and accompanying appendices. The ATR Draft of the DMMP is being provided to you for review and comments by members of your agency. In addition to you, a similar email and hyperlink to the LIS DMMP documents was also provided to your agency's member(s) of the Project Development Team (PDT) as identified in the US Environmental Protection Agency Annual Report on Long Island Sound.

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Sincerely,

A handwritten signature in black ink, reading "William C. Scully", is written over the typed name.

William C. Scully, P.E.
Deputy District Engineer for Project Management



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

June 2, 2015

Project Management Division
Civil/IIS Project Management Branch

Mr. Jeffrey Gratz, Deputy Director
Clean Water Division
US Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

Dear Mr. Gratz,

On June 1, 2015, you were sent an email with a hyperlink that would allow you to download electronic versions of the Agency Technical Review (ATR) Draft of the Long Island Sound Dredged Material Management Plan (LIS DMMP) and accompanying appendices. The ATR Draft of the DMMP is being provided to you for review and comments by members of your agency. In addition to you, a similar email and hyperlink to the LIS DMMP documents was also provided to your agency's member(s) of the Project Development Team (PDT) as identified in the US Environmental Protection Agency Annual Report on Long Island Sound.

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Sincerely,

William C. Scully, P.E.
Deputy District Engineer for Project Management



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June 2, 2015

Project Management Division
Civil/IIS Project Management Branch

Mr. Jeffrey Willis, Deputy Director
Rhode Island Coastal Resource Management Council
Stedman Government Center, Suite 3
4808 Tower Hill Road
Wakefield, RI 02879-1900

Dear Mr. Willis,

On June 1, 2015, you were sent an email with a hyperlink that would allow you to download electronic versions of the Agency Technical Review (ATR) Draft of the Long Island Sound Dredged Material Management Plan (LIS DMMP) and accompanying appendices. The ATR Draft of the DMMP is being provided to you for review and comments by members of your agency. In addition to you, a similar email and hyperlink to the LIS DMMP documents was also provided to your agency's member(s) of the Project Development Team (PDT) as identified in the US Environmental Protection Agency Annual Report on Long Island Sound.

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Sincerely,

William C. Scully, P.E.
Deputy District Engineer for Project Management



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June 2, 2015

Project Management Division
Civil/IIS Project Management Branch

Mr. Louis Chiarella, Assistant Regional Administrator
Habitat Conservation Division
National Marine Fisheries Service
National Oceanographic Atmospheric Administration
1 Blackburn Drive
Gloucester, MA 01930

Dear Mr. Chiarella,

On June 1, 2015, you were sent an email with a hyperlink that would allow you to download electronic versions of the Agency Technical Review (ATR) Draft of the Long Island Sound Dredged Material Management Plan (LIS DMMP) and accompanying appendices. The ATR Draft of the DMMP is being provided to you for review and comments by members of your agency. In addition to you, a similar email and hyperlink to the LIS DMMP documents was also provided to your agency's member(s) of the Project Development Team (PDT) as identified in the US Environmental Protection Agency Annual Report on Long Island Sound.

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Sincerely,

A handwritten signature in black ink, reading "William C. Scully", is written over a circular stamp.

William C. Scully, P.E.
Deputy District Engineer for Project Management



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June 2, 2015

Project Management Division
Civil/IIS Project Management Branch

Mr. James Gilmore, Chief
Bureau of Water Management
New York Department of Environmental Conservation
205 North Belle Mead Road
Suite 1, East Setauket
New York 11733

Dear Mr. Gilmore,

On June 1, 2015, you were sent an email with a hyperlink that would allow you to download electronic versions of the Agency Technical Review (ATR) Draft of the Long Island Sound Dredged Material Management Plan (LIS DMMP) and accompanying appendices. The ATR Draft of the DMMP is being provided to you for review and comments by members of your agency. In addition to you, a similar email and hyperlink to the LIS DMMP documents was also provided to your agency's member(s) of the Project Development Team (PDT) as identified in the US Environmental Protection Agency Annual Report on Long Island Sound.

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Sincerely,

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William C. Scully, P.E.
Deputy District Engineer for Project Management



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

April 28, 2015

Robert K. Klee, Commissioner
Department of Energy and Environmental
Protection
79 Elm Street
Hartford, CT 06106-5127

Colonel Paul E. Owen, District Engineer
U.S. Army Corps of Engineers
New York District
26 Federal Plaza
New York, NY 10278

Cesar A. Perales, Secretary
New York Department of State
One Commerce Plaza
99 Washington Ave,
Albany, NY 12231-0001

Judith A. Enck, Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

Colonel Chris J. Barron, District Engineer
U.S. Army Corps of Engineers
New England District
696 Virginia Rd.
Concord, MA 01742

Re: Extension of Deadline for the Completion of the Long Island Sound Dredged Material Management Plan and the Use of the Central and Western Long Island Sound Dredged Material Disposal Sites

Dear Agency Directors:

At the most recent Long Island Sound Dredged Material Management Plan (LIS DMMP) Steering Committee meeting on March 11, 2015, the committee discussed a second extension to the deadline for completion of the DMMP. Without a further extension, the Central and Western Long Island Sound dredged material disposal sites (CLDS and WLDS, respectively), will no longer be available to receive dredged material from all federal projects and private projects generating more than 25,000 cubic yards after April 30, 2015.

As background, the EPA designated CLDS and WLDS in a June 5, 2005, rulemaking that, among other things, included a "sunset clause" requiring the development of a regional dredged material management plan for Long Island Sound. 70 Fed. Reg. 32,498 (June 3, 2005). See 40 C.F.R. §§ 228.15(b)(4)(vi)(C) and 228.15(b)(5)(vi). The rule contains two options to extend the original July 5, 2013 deadline for the completion of the DMMP and continued use of CLDS and WLDS. Under the first option, the EPA may unilaterally extend

the use of the CLDS and WLDS one time by up to one year. Under the second option, the EPA may extend the deadline in paragraph (b)(4)(vi)(C) for any reasonable period (on one or more occasions) if it first obtains the written agreement of the Connecticut Department of Energy and Environmental Protection (CT DEEP), the New York State Department of State (NYS DOS), and the U.S. Army Corps of Engineers (USACE). The EPA used this second option to extend the deadline from July 5, 2013, to April 30, 2015.

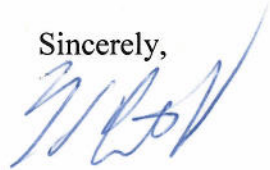
While good progress has been made in the preparation of the LIS DMMP, the large scale and complexity of the project has caused further delays in the completion of the DMMP and the supporting Programmatic Environmental Impact Statement (PEIS). The EPA finds the USACE has made a good faith effort to complete the LIS DMMP and PEIS by April 30, 2015, but reasonably needs additional time. The current best estimate of the completion of the DMMP and PEIS is December 31, 2015. Upon completion of the DMMP, 40 C.F.R. § 228.15(b)(4)(vi)(C) calls for the EPA to amend the site designation to incorporate procedures and standards that are consistent with the DMMP (or revised consistent with provisions at 40 C.F.R. § 228.15(b)(4)(vi)(G)).

Over the past two months, the Steering Committee has made a concerted effort to reach an agreement to further extend the April 30, 2015 deadline. However, despite the best efforts of the committee, the parties were unable to achieve the necessary consensus.

Consequently, by this letter and pursuant to 40 C.F.R. § 228.15(b)(4)(v) and (vi)(E) and 40 C.F.R. § 228.15(b)(5)(v) and (vi), the EPA is extending the deadline for completion of the DMMP at 40 C.F.R. § 228.15(b)(4)(iv) (C) to April 30, 2016. While the current best estimate is that the DMMP will be completed by December 31, 2015, it is reasonable to extend the date a few additional months due to the difficulty of predicting precisely when a task as difficult as developing the DMMP will be completed.

The EPA expects that the Steering Committee and participating agencies engaged in this important effort will work cooperatively and diligently to complete the DMMP and the PEIS as expeditiously as possible.

Sincerely,



H. Curtis Spalding
Regional Administrator

cc: LIS DMMP Steering Committee



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

**5 Post Office Square, Suite 100
Boston, MA 02109-3912**

June 10, 2013

Daniel C. Esty, Commissioner
Department of Energy and Environmental
Protection
79 Elm Street
Hartford, CT 06106-5127

Colonel Paul E. Owen, District Engineer
U.S. Army Corps of Engineers
New York District
26 Federal Plaza
New York, NY 10278

Cesar A. Perales, Secretary
New York Department of State
One Commerce Plaza
99 Washington Ave,
Albany, NY 12231-0001

Judith A. Enck, Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

Colonel Charles Samaris, District Engineer
U.S. Army Corps of Engineers,
New England District
696 Virginia Rd.
Concord, MA 01742

Re: Proposed Extension of Time for the Completion of the Long Island Sound Dredged
Material Management Plan and the Use of the Central and Western Long Island Sound
Dredged Material Disposal Sites

Dear Agency Directors:

At the most recent Long Island Sound Dredged Material Management Plan (LIS DMMP) Steering Committee meeting on February 15, 2013, the U.S. Environmental Protection Agency (EPA) discussed its intent to extend time for completion of the DMMP. Without this extension, the Central and Western Long Island Sound dredged material disposal sites (CLIS and WLIS, respectively), will no longer be available to receive dredged material from all federal projects and private projects generating more than 25,000 cubic yards after July 5, 2013. EPA has two options available: a unilateral one year extension or a written agreement between our agencies. By this letter, EPA is initiating the latter option. EPA believes this strengthens our collective commitment to managing dredged material in Long Island Sound in a responsible manner.

As background, EPA designated CLIS and WLIS in a June 5, 2005, rulemaking which, among other things, included a "sunset clause" related to the development of a regional dredged material management plan for Long Island Sound. 70 Fed. Reg. 32,498 (June 3, 2005). See 40

C.F.R. §§ 228.15(b)(4)(vi)(C) and 228.15(b)(5)(vi). Two exceptions are provided, however, to the eight year deadline for the completion of the DMMP and continued use of CLIS and WLIS. See 40 C.F.R. §§ 228.15(b)(4)(vi)(C) and 228.15(b)(5)(vi). First, if the LIS DMMP is not completed by July 5, 2013, use of the disposal sites will be terminated but may be resumed if the LIS DMMP is completed by July 5, 2014. Second, EPA may use either of two options for extending the July 5, 2013, deadline for site use **and** LIS DMMP completion pursuant to either 40 C.F.R. § 228.15(b)(4)(v)(D) or §228.15(b)(4)(v)(E). *See also* 40 C.F.R. § 228.15(b)(5)(vi). Under the first option, the EPA may unilaterally extend the use of the CLIS and WLIS by one year.

Under the second option, the EPA may extend the deadline in paragraph b)(4)(vi)(C) for any reasonable period (on one or more occasions) if it first obtains the written agreement of the Connecticut Department of Energy and Environmental Protection (CT DEEP), the New York State Department of State (NYSDOS), and the U.S. Army Corps of Engineers (USACOE). The EPA has selected this second option. Consequently, pursuant to this provision and procedure, EPA is requesting your signature below to signify your written agreement with EPA's proposal to extend the completion date for the LIS DMMP and thus allow the continued use of the CLIS and WLIS until April 30, 2015.

By this letter, and pursuant to 40 C.F.R. § 228.15(b)(4)(v) and (vi)(C) and (D) and 40 C.F.R. § 228.15(b)(5)(v) and (vi), the EPA is:

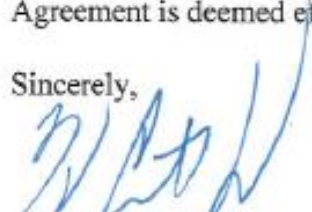
- (a) requesting written agreement by CT DEEP, NYS DOS and USACOE with EPA's proposal to extend the deadline for USACOE completion of the LIS DMMP, and for continued use of CLIS and WLIS from July 5, 2013 to April 30, 2015; and
- (b) requesting written concurrence with this extension by CT DEEP, NYS DOS, and USACOE.

USACOE, as the designated project manager, initiated the LIS DMMP in 2005 with minimal funding, as required by the EPA Final Designation rule for WLIS and CLIS (40 C.F.R. §§ 228.15(b)(4)(vi)(C) and 228.15(b)(5)(vi)); however no additional funding for the project was received until 2008. The EPA makes this proposal and request based on its opinion that the USACOE has made a good faith effort to complete the LIS DMMP by July 5, 2013, but reasonably needs more time given resource constraints and the demands of the project. At this time, USACOE anticipates the LIS DMMP will be completed in early 2015.

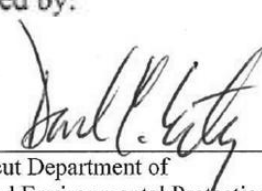
By signing this agreement, each agency agrees to the proposed extension of time for the USACOE to complete the "regional dredged material management plan (DMMP) for Long Island Sound ... with a goal of reducing or eliminating the disposal of dredged material in Long Island Sound" (40 C.F.R. §§ 228.15(b)(4)(vi)(C) and 228.15(b)(5)(vi)). It is further acknowledged by each agency that "Completion of the DMMP means finishing the items listed in the project management plan, including the identification of alternatives to open-water disposal, and the development of procedures and standards for the use of practicable alternatives to open-water disposal," and that the agreed upon extension of time is intended to provide sufficient and appropriate additional time to achieve completion of the LIS DMMP in accordance with that standard (40 C.F.R. §§ 228.15(b)(4)(vi)(C) and 228.15(b)(5)(vi)).

EPA requests that you sign and return this document to EPA no later than June 17, 2013. This Agreement is deemed effective upon signature of all agency representatives.

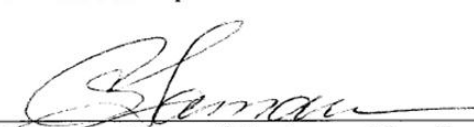
Sincerely,


H. Curtis Spalding
Regional Administrator

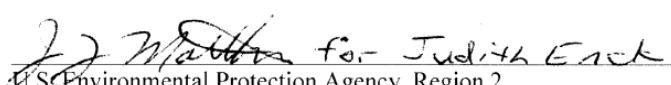
Concurred by:


Connecticut Department of
Energy and Environmental Protection
6/17/13
Date


New York State Department of State
June 13, 2013
Date


U.S. Army Corps of Engineers, New England District
14 June 13
Date


U.S. Army Corps of Engineers, New York District
17 June 2013
Date


U.S. Environmental Protection Agency, Region 2
6/26/2013
Date

cc: LIS DMMP Steering Committee



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

JUN 08 2012

Colonel Charles P. Samaris
U.S. Army Corps of Engineers
New England District
696 Virginia Rd.
Concord, MA 01742

OFFICE OF THE
REGIONAL ADMINISTRATOR

RE: Eastern Long Island Sound Supplemental Environmental Impact Statement

Dear Colonel Samaris:

The U.S. Environmental Protection Agency, Region 1 (EPA) respectfully requests that the U.S. Army Corps of Engineers, New England District (Corps) serve as a "cooperating agency" under the National Environmental Policy Act in connection with EPA's preparation of a Supplemental Environmental Impact Statement (SEIS) to evaluate the potential designation of one or more dredged material disposal sites in the eastern Long Island Sound (ELIS) region. EPA is undertaking this effort pursuant to its responsibilities under the Marine Protection, Research, and Sanctuaries Act and Clean Water Act.

The ELIS SEIS will build on and supplement the Long Island Sound Environmental Impact Statement (LIS EIS), completed in April 2004, which supported and led to the designation of the Central and Western Long Island Sound dredged material disposal sites in June 2005. EPA appreciates the Corps' contributions as a cooperating agency to that effort, as well as your lead role on the development of the Long Island Sound Dredged Material Management Plan (LIS DMMP), and we look forward to continued collaboration in the preparation of the ELIS SEIS.

EPA asks that you respond in writing by June 30, 2012, with a commitment from your agency that you wish to be considered as a cooperating agency in this process. We are in the preliminary stages of this process and do not yet have a detailed timeline, but plan to publish a "Notice of Intent" to prepare an ELIS SEIS by early July.

If you have any questions, please contact me or Mel Coté, Manager of our Ocean and Coastal Protection Unit, at 617-918-1553 or cote.mel@epa.gov.

Sincerely,

H. Curtis Spalding
Regional Administrator

cc: Bill Scully
Bill Hubbard
Bob DeSista

Robert Byrne
John Kennelly
Jay Mackay



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

June 7, 2012

OFFICE OF THE
REGIONAL ADMINISTRATOR

Daniel C. Esty, Commissioner
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106

Dear Commissioner Esty:

Thank you for your letter dated May 9, 2012, following up on our May 1 meeting with the U.S. Army Corps of Engineers and U.S. Navy to discuss EPA's plans to initiate a Supplemental Environmental Impact Statement (SEIS) for the potential designation of a dredged material disposal site in eastern Long Island Sound (ELIS). We also want to thank the state of Connecticut again for providing \$1.8 million for environmental studies and public outreach activities to support the SEIS.

EPA continues to make steady progress toward initiating the SEIS. We will be sending cooperating agency letters later this week and plan to issue the Notice of Intent in the Federal Register later this month or early July. We are planning two weeks of data collection aboard the *OSV Bold* in July. We also continue to have high-level discussions with our Headquarters regarding various funding options for the approximately \$1.5 million needed to complete the SEIS.

Thank you again for your support and patience as we move forward with this important effort. Please feel free to contact me or Stephen Perkins of my staff at (617) 918-1501 if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Curtis Spalding", is written over the word "Sincerely,".

H. Curtis Spalding
Regional Administrator

cc: Rear Admiral T.G. Alexander, U.S. Navy
Colonel Charles P. Samaris, USACE
James Redeker, CTDOT
Robert Ross, CT Office of Military Affairs
Senator Joseph Lieberman
Senator Richard Blumenthal
Congressman John Larson
Congressman Joe Courtney
Congresswoman Rosa DeLauro
Congressman Jim Himes
Congressman Christopher Murphy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

February 21, 2012

OFFICE OF THE
REGIONAL ADMINISTRATOR

Rear Admiral T. G. Alexander
Department of the Navy
Navy Region Mid-Atlantic
1510 Gilbert Street
Norfolk, VA 23511-2737

Dear Rear Admiral Alexander:

Thank you for your letter dated January 13, 2012, requesting a meeting with me to discuss ways to work together to support the completion of the Supplemental Environmental Impact Statement for the potential designation of dredged material disposal sites in eastern Long Island Sound. Your letter also provides additional information about the upcoming dredging needs for the Naval Submarine Base in New London, Connecticut.

We are aware that Congress granted a five-year extension for the use of the New London Disposal Site in Section 116 of Public Law 112-74 (Consolidated Appropriations Act for FY 2012). As you indicated, the Conference Report for the Appropriations Act also directs EPA to submit a report no later than 90 days after its enactment outlining our plan to carry out the SEIS for eastern Long Island Sound. EPA is preparing the report and plans to submit it to Congress before the 90-day deadline.

With regard to your request for a meeting, my office is in the process of scheduling a meeting for us and senior officials from the U.S. Army Corps of Engineers, New England District, and the Connecticut Department of Energy and Environment to discuss ways we can work together to support completion of the SEIS. I look forward to meeting you and working with the Navy on this important project.

If you have further questions, please feel free to contact me or Nancy Grantham, Director of our Office of Public Affairs, at (617) 918-1101.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Curtis Spalding".

H. Curtis Spalding
Regional Administrator

cc: Colonel Charles Samaris, Chief Engineer, USACE
Daniel Esty, Commissioner, CTDEEP

A-3-69

Internet Address (URL) • <http://www.epa.gov/region1>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

December 5, 2011

OFFICE OF THE
REGIONAL ADMINISTRATOR

Rear Admiral T. G. Alexander
Department of the Navy
Navy Region, Mid-Atlantic
1510 Gilbert Street
Norfolk, VA 23511-2737

Dear Rear Admiral Alexander:

Thank you for your letter dated November 4, 2011, regarding the potential designation of dredged material disposal sites in eastern Long Island Sound, and providing information about the upcoming dredging needs for the Naval Submarine Base, New London, Connecticut.

As you know, dredged material disposal in eastern Long Island Sound (LIS) has taken place at disposal sites "selected" by the U.S. Army Corps of Engineers (the Corps). Disposal at Corps-selected sites is limited to five or, under certain circumstances, ten years. The use of the New London Disposal Site (NLDS) expired on October 5, 2011, for all federal dredging projects and non-federal projects generating more than 25,000 cubic yards of dredged material. At present, suitable dredged material from the eastern portion of the Sound may potentially be disposed of at EPA-designated disposal sites, such as the Central Long Island Sound disposal site (CLIS, designated by EPA in 2005), the Western Long Island Sound disposal site (WLIS, designated by EPA in 2005), or the Rhode Island Disposal Site (RIDS, designated by EPA in 2004). If disposal at an EPA-designated site is not feasible, disposal could potentially occur at a new site selected by the Corps for an initial five-year term of use. We realize that disposing of such material at these other more distant sites could be more costly and logistically challenging than disposal at a site in eastern LIS. Moreover, we realize that Corps-selected sites provide only a relatively short-term solution for disposal needs and do not facilitate long-term planning.

We estimate the total cost to complete a Supplemental Environmental Impact Statement (SEIS) to evaluate potential alternative disposal sites in eastern LIS to be in the range of \$3 million to \$3.5 million. This cost estimate is based on the fact that some of the necessary data was already collected for the previous EIS that led to the designation of the CLIS and WLIS sites, and more recently by EPA, utilizing its ship, the Ocean Survey Vessel Bold, and the Corps through its LIS Dredged Material Management Plan process.

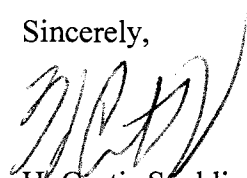
While EPA is the only federal agency authorized to designate dredged material disposal sites for long-term use, the Agency has not historically been provided funding for site designations, relying instead on the Corps or other dredging proponents to secure the necessary resources. Along those lines, the Connecticut State Bond Commission recently approved \$1.8 million for

environmental studies to support the SEIS. EPA is working with Connecticut to ensure that these studies will be consistent with federal requirements. EPA is interested in working in partnership with the Navy to continue site designation studies and the SEIS for eastern Long Island Sound while EPA's ability to fund any portion of the work is dependent on passage of the Agency's fiscal year 2012 budget.

We would like to meet with you and the Corps in the near future to discuss ways we can work together to support completion of the SEIS. In addition, it would be helpful if you could provide an update on planned dredging projects and projected disposal needs for the next several years, including cost estimates for using alternative disposal sites, and any other information about the significant long-term operational costs for the submarine base cited in your letter.

If you have further questions, please feel free to contact me or Stephen Perkins, director of our Office of Ecosystem Protection, at (617) 918-1501.

Sincerely,



H. Curtis Spalding
Regional Administrator

*This is indeed a matter
of personal concern
Will continue to follow up
with DC Leadership.*

cc: ✓ Colonel Charles Samaris, Chief Engineer, USACE
Daniel Esty, Commissioner, CTDEEP



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION, MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:
5090

N00/N45
NOV 04 2011

Mr. Curt Spalding
U.S. Environmental Protection Agency
New England Headquarters
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Dear Mr. Spalding:

As the Department of Navy (DoN) Regional Environmental Coordinator (REC) for the U.S. Environmental Protection Agency (EPA) Region I, I am responsible for facilitating discussions of various environmental policies and regulatory matters of importance to the U.S. Navy. I invite your attention to an issue of significant interest to the Navy mission outlined in the enclosed letter from the Commanding Officer of Naval Submarine Base (NAVSUBASE) New London, Groton, Connecticut. The Region is concerned about the sustainability of our waterfront operations at NAVSUBASE New London, as they have utilized the U.S. Army Corps of Engineers' (USACE) New London Disposal Site (NLDS) in Long Island Sound for disposal of dredge material from waterfront maintenance and capital improvement projects. So far, EPA Region I has not designated an alternate disposal site for use in its place.

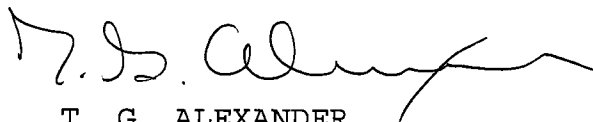
As you are undoubtedly aware, the Federal Government manages waters of Long Island Sound as Ocean Waters under Title 33, U.S. Code § 1401 to § 1445, the Marine Protection, Research, and Sanctuaries Act (MPRSA), known as the Ocean Dumping Act. Section 1412(c) of the Act requires the EPA Administrator, in conjunction with the USACE, to develop a site management plan for each site designated for ocean dumping. Moreover, no site is permitted to receive final designation for ocean dumping absent the development of a site management plan. The EPA and the USACE issued a final designation for dredged material sites in Long Island Sound, Connecticut, and New York, pursuant to a USACE issued permit under § 1413 of the Act. Unlike an EPA issued permit, a permit issued by the USACE is not a final designation. Thus, in the absence of final designation, use of the Long Island Sound disposal sites was limited to two, 5-year periods. The second 5-year period of non-designated use began in October of 2006, and the site officially closed on October 5, 2011.

5090
N00/N45
NOV 04 2011

In June of 2007, we contacted your office regarding the importance of the Long Island Sound disposal site to the Navy's operational mission. At that time, my office was assured plans were in place to commence an Environmental Impact Statement (EIS), such that either the Long Island Sound disposal site or a suitable alternative would be identified prior to closure. Based on recent discussions with your staff and the USACE, it appears the EIS to formally designate a suitable alternative has not been initiated, nor have funds been allotted for the study. As such, NAVSUBASE New London will not have an open-water, dredge material option for dredging and pier construction projects. The lack of an open-water dredge option could cause significant long term operational impacts. We request an update on the planned resolution of the issue, including estimates of time anticipated for designation of an alternate disposal site.

My point of contact for this matter is Ms. Christine Porter, Director, Regional Environmental Coordination. She may be reached at (757) 341-0363 or via E-mail: christine.porter@navy.mil.

Sincerely,



T. G. ALEXANDER
Rear Admiral, U.S. Navy

Enclosure: 1. NAVSUBASE New London Letter

Copy to: U.S. Army Corps of Engineers, NE District
Connecticut Department of Environmental Protection
Commander, U.S. Fleet Forces Command (N46)
Commanding Officer, Naval Submarine Base, New London

SIR -

I APPRECIATE ANYTHING YOU CAN
DO TO GET THIS MOVING.



DEPARTMENT OF THE NAVY

NAVAL SUBMARINE BASE NEW LONDON
GROTON, CONNECTICUT 06349-5000

5090
Ser N45/0968
21 Sep 11

From: Commanding Officer, Naval Submarine Base New London
To: Commander, Navy Region, Mid-Atlantic

Subj: DESIGNATION OF THE U.S. ARMY CORPS OF ENGINEERS NEW
LONDON DREDGE MATERIAL DISPOSAL SITE (NLDS)

Encl: (1) COMNAVREG MIDLANT ltr 5090 N451/02/7292 of 30 Apr 07
(2) SUBASE New London Dredging Schedule

1. The Naval Submarine Base New London (SUBASE) is again requesting assistance in addressing the issue of formal designation of the Army Corps of Engineers' (USACE) New London Disposal Site (NLDS) as detailed in enclosure (1). SUBASE remains concerned that failure to formally designate the NLDS will adversely impact SUBASE's ability to dredge along its waterfront and maintain the necessary water depths for home ported submarines. The NLDS site is slated for closure in December 2011.

2. SUBASE requests that Commander, Navy Region, Mid-Atlantic Regional Environmental Coordinator staff reengage U. S. Environmental Protection Agency Region 1 to facilitate the prompt initiation of the process to designate the NLDS or suitable alternative before the site closes in 2011. Failure to maintain an open-water dredge material disposal option for SUBASE dredging and pier construction projects could cause long-term operational impacts at SUBASE.

3. Please contact the SUBASE Environmental Director, Mr. Michael Brown, at (860) 694-3976, if you have any questions regarding this matter.


M. A. PENNINGTON
Acting



DEPARTMENT OF THE NAVY
COMMANDER
NAVY REGION, MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

RECEIVED

JUN 1 2007

DEP OFFICE OF
LONG ISLAND SOUND PROGRAMS

IN REPLY REFER TO:

5090

N451/02/7292

APR 30 2007

Mr. Robert W. Varney
U.S. Environmental Protection Agency
1 Congress Street
Boston, MA 02114-2023

RECEIVED

MAY 8 - 2007

Dear Mr. Varney:

Request your attention to an issue of significant importance to the Navy mission that is outlined in the enclosed Naval Submarine Base (NAVSUBASE), New London, letter. The Region is concerned about the sustainability of our waterfront operations at NAVSUBASE New London, as they currently utilize the U.S. Army Corps of Engineers' (USACE) New London Disposal Site (NLDS) in Long Island Sound for disposal of dredge material from waterfront maintenance and capital improvement projects.

The waters of Long Island Sound are managed as Ocean Waters by the Federal Government under the Marine Protection Research and Sanctuaries Act (MPRSA or the Ocean Dumping Act). In 1992, amendments to this Act required that all ocean disposal sites be formally designated. In absence of this designation, use of disposal sites is limited to two five-year periods. The second five-year period of non-designated use for NLDS began in October 2006.

New London Disposal Site is scheduled for closure in December 2011 unless United States Environmental Protection Agency (USEPA), in partnership with USACE and the stakeholder States, commence and complete an Environmental Impact Statement (EIS) and formally designate the site or a suitable alternative. As the preparation of an EIS and subsequent designation of site is a lengthy process, we request USEPA begin the formal process to designate NLDS or a suitable alternative so that NLDS, or an alternative, site is identified prior to NLDS closure in 2011.

If you have any questions regarding this matter, please contact Ms. Christine Porter at (757)445-6493 or via E-mail: christine.porter@navy.mil.

Sincerely,

F. R. RUEHE
Rear Admiral, U.S. Navy

RECEIVED

MAY 22 2007

DEPT. OF ENVIRONMENTAL PROTECTION
OFFICE OF DEPUTY COMMISSIONER

Enclosure: 1. NAVSUBASE New London Letter

Copy to: U.S. Army Corps of Engineers
Connecticut Department of Environmental Protection
Commanding Officer, Naval Submarine Base, New London, Groton, CT

A-3-75



Connecticut Harbor Management Association

May 25, 2011

Mr. Michael Keegan
Project Manager
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, Massachusetts 01742-2751

CHMA Board Members

President

John Thomas Pinto, Ph.D.
Norwalk Harbor Mgmt Comm

Vice President

Mary von Conta
Fairfield Harbor Mgmt Comm

Secretary/Treasurer

Louis Allyn
Mystic Harbor Mgmt Comm

John Henningson
Guilford Harbor Mgmt Comm

Peter Holecz
Bridgeport Harbor Mgmt Comm

Don Landers
East Lyme Harbor Mgmt Comm

Devin Santa
Stratford Harbor Mgmt Comm

Joel P. Severance
Chester Harbor Mgmt Comm

Michael Griffin
Harbor Master Norwalk Harbor

Patrick Carroll (Alternate)
Harbor Master Southport Harbor

Geoffrey Steadman
Coastal Area Planning Consultant

John Roberge (Alternate)
Roberge Assoc. Coastal Engs, LLC

Subject: Long Island Sound Dredged Material Management Plan

Dear Mr. Keegan:

On behalf of the Board of Directors of the Connecticut Harbor Management Association (CHMA), we wish to provide some additional comments regarding the multi-criteria decision analysis discussed during the April 26, 2011 meeting of the working group of the Long Island Sound Dredged Material Management Plan (DMMP).

In our previous comments on this subject, provided in our May 12, 2011 letter to you, we did not mention the opportunities that we see for nearshore dispersal of sandy dredged material. That material would then be transported to shore by natural littoral processes and provide beach nourishment benefits. These opportunities were discussed during a July 19, 2010 dredging seminar sponsored by the CHMA in coordination with the Corps of Engineers' New England District. The purpose of the seminar was to discuss the feasibility of using special purpose dredges, including small hopper dredges, to help maintain the viability of small and mid-size harbors. The Board of the CHMA has pledged its commitment to provide in-kind planning, coordination, and public outreach services to assist the Corps' efforts to evaluate the feasibility of using special purpose dredges such as the *Currituck* in Connecticut harbors.

Recently, with the support of the CHMA, the Corps of Engineers' New England District received funds through the Corps' Low Use Navigation Pilot Project program to investigate nearshore locations suitable for dispersal of sandy dredged material in Connecticut. A coordinated effort

is now underway involving the Corps, Connecticut Department of Environmental Protection, and Stratford Waterfront and Harbor Management Commission to identify a suitable location that would accommodate sandy dredged material from the Housatonic River channel and possibly from the Milford Harbor channel.

For purposes of the Dredged Material Management Plan, we recommend that nearshore dispersal of suitable sandy material be considered as an open water dredged material disposal option for inclusion in the DMMP. To the extent practical, evaluation of potential nearshore dispersal sites in the course of the DMMP planning process should be coordinated with the Corps' ongoing evaluations conducted through the Low Use Navigation Pilot Project program.

Thank you for the opportunity to express these additional comments. We look forward to continuing our participation in this important process. If you have any questions, you may contact us at the numbers and e-mail addresses below.

Sincerely,

John T. Pinto, Ph.D.
President, CHMA
(914) 594-3332 (office phone)
(203) 984-5339 (mobile phone)
pintoj@optonline.net

Geoff Steadman
CHMA representative to the DMMP Working Group
(203) 226-9383 (office phone)
(203) 515-6066 (mobile phone)
geoffreysteadman@att.net

JTP/GS/gs
cc: CHMA Board of Directors
Mr. Ed O'Donnell, Chief of Navigation, USACE New England District



*35 Winfield Court * East Norwalk, Connecticut 06855 * U.S.A. * 203 853-3493*



Connecticut Harbor Management Association

May 12, 2011

Mr. Michael Keegan
Project Manager
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, Massachusetts 01742-2751

Subject: Long Island Sound Dredged Material Management Plan

CHMA Board Members

President

John Thomas Pinto, Ph.D.
Norwalk Harbor Mgmt Comm

Vice President

Mary von Conta
Fairfield Harbor Mgmt Comm

Secretary/Treasurer

Louis Allyn
Mystic Harbor Mgmt Comm

John Henningson
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Devin Santa
Stratford Harbor Mgmt Comm

Joel P. Severance
Chester Harbor Mgmt Comm

Michael Griffin
Harbor Master Norwalk Harbor

Patrick Carroll (Alternate)
Harbor Master Southport Harbor

Geoffrey Steadman
Coastal Area Planning Consultant

John Roberge (Alternate)
Roberge Assoc. Coastal Engs, LLC

Dear Mr. Keegan:

On behalf of the Board of Directors of the Connecticut Harbor Management Association (CHMA), we are providing the following comments regarding the multi-criteria decision analysis discussed during the April 26, 2011 meeting of the working group of the Long Island Sound Dredged Material Management Plan (DMMP). Neither Mr. Steadman nor I were able to attend this meeting. In our absence, Mr. Michael Griffin, City of Norwalk representative and CHMA Board member, provided the meeting materials to us, including the worksheets that we subsequently reviewed. Those worksheets present criteria for evaluating alternative dredged material disposal options for: 1) suitable fine materials; 2) suitable sandy materials; and 3) unsuitable materials.

We look forward to contributing to the development of an effective, evidence-based plan that will provide for sustainable use and conservation of the Sound and continued viability of the water-dependent uses that depend on dredging of federal navigation projects.

The following comments are provided based on our review of the worksheet material and are not presented in any order of priority.

1. Regarding the alternative categories of dredged material disposal options for all sediment types, it should be recognized that the "upland placement" and "beneficial use" categories overlap. Some beneficial uses will occur on upland sites.

2. Possible beneficial uses of suitable sandy materials should include habitat restoration and/or enhancement, including, but not limited to, island creation/restoration which can provide bird habitat and other natural values.
3. The category “innovative technology” is somewhat confusing. It would seem that this is not a disposal category itself, but rather a method for preparing or modifying dredged for beneficial use, upland placement, or even open water disposal.
4. Regarding beneficial use of unsuitable material, it should be recognized that unsuitable material can be used by itself or mixed with concrete and other materials for environmental remediation purposes (for example, remediation of the “tire pond” site in North Haven) and for landfill cap. In addition, it is our understanding that unsuitable dredged material may be used for coal mine or quarry reclamation purposes.
5. When considering landfill applications in Connecticut, it is our understanding that in 2010 there were only two landfills in Connecticut, but in the Hartford area, that could potentially accept even limited amounts of dredged material. To be accepted at either landfill, the dredged material would have to be de-watered, deemed acceptable as cover material for eventual landfill closure, and transported by truck over state highways at significant environmental and economic costs.
6. Regarding disposal options for unsuitable material, it is unclear what is meant by “near-shore CDF” and why this option is considered under the “upland placement” category. Is “nearshore CDF” the option that the ACOE refers to as a confined aquatic disposal (CAD) option? And if so, should this option not be considered under the “open water” category?
7. It is our understanding that suitable fine material can be beneficially used as cap material. For example, the material most recently dredged from North Cove in Old Saybrook was generally fine-grained material and it was used as cap material for phase two of the Norwalk Harbor dredging project.
8. It is unclear what you mean by “transportation” beneficial use for suitable fine materials. Do you envision that this material can be developed into landfill to prepare road beds for construction? It is our understanding that fine materials lack the required structural strength for construction applications, including use as foundation or back-fill material.
9. We assume that the four listed criteria—environmental, ecological, human welfare, and economic—that are being considered for each sediment type represent impact evaluation criteria and will be used to evaluate both the positive and negative effects of dredged material disposal.
10. Under the ‘ecological’ criteria, we recommend that marine microorganisms, including, but not limited to, phytoplankton, be added to the sub-criteria. These beneficial microorganisms have an important function pertaining to the balance of oxygen and carbon dioxide between our waterways and the atmosphere.

11. We assume that the “human welfare” criteria are intended to represent and include impacts that are sometimes described as “cultural” impacts, and that the sub-criteria would include scenic and aesthetic impacts (such as may be associated with construction of dredged material disposal islands as in Chesapeake Bay) as well as impacts on archaeological and historic resources, and that the “social” sub-category would include recreational impacts.
12. Regarding the “economic” sub-criteria, consideration should be given not only to short-term and long-term impacts, but also to local, regional, state-wide, and national economic impacts associated with maintenance of Connecticut’s ports and harbors. For example, dredging of New Haven and New London harbors is of national interest; the economic impacts associated with Norwalk Harbor dredging are of regional significance; and the smallest recreational harbors provide local economic impacts.

Thank you for the opportunity to express our comments and concerns. We look forward to continuing our participation in this important process. If you have any questions, you may contact us at the numbers and e-mail addresses below.

Sincerely,

John T. Pinto, Ph.D.
 President, CHMA
 (914) 594-3332 (office phone)
 (203) 984-5339 (mobile phone)
pintoj@optonline.net

Geoff Steadman
 CHMA representative to the DMMP Working Group
 (203) 226-9383 (office phone)
 (203) 515-6066 (mobile phone)
geoffreysteadman@att.net
 JTP/GS/gs





DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

April 21, 2011

Programs/Project Management Division
Programs & Civil Project Management Branch

Mr. John Thomas Pinto, Ph.D.
President, Connecticut Harbor Management Association
35 Winfield Court
East Norwalk, CT 06855

Dear Mr. Pinto,

This is in response to your letter, dated April 15, 2011, with questions on the Long Island Sound Dredged Material Management Plan (LIS DMMP), the communication within the Working Group, the goals of the LIS DMMP and Coastal Zone Management Consistency.

You asked if it would be possible to have the various Working Group members share information electronically with other members. I have spoken to our contractor and we can arrange a sharing of information with other members utilizing features of the Working Group webpage.

You expressed concern that the LIS DMMP goals as presented at the most recent Working Group meeting do not align with the goals established in the Final Rule (40 CFR 228.15(b)(4) Designation for Central and Western Long Island Sound Dredged Material Disposal Sites) which designated the disposal sites in central and western LIS. One of the first activities that we do in any project is to develop a Project Management Plan (PMP). The purpose of a PMP is to define the scope of the study, to identify the resources necessary to accomplish the tasks, to identify the responsible team members to accomplish tasks, and to identify the tools necessary to ensure project implementation success. To better define the purpose and tasks of the LIS DMMP, several resource agency meetings were held to discuss the development of the LIS DMMP and identify a conceptual scope of work. In addition, this PMP summarizes the purpose and need of the plan, the detailed steps, tasks, and resources involved in developing the plan, and the schedule for developing the plan. It also establishes the process for preparing the LIS DMMP and for meeting the requirements set out in the NEPA of 1969, as amended and CZMA of 1972 as amended.

The Corps of Engineers cannot develop management plans for other agencies or other navigational interests because one of the things that needs to be addressed is whether the alternatives being evaluated are practicable for the management of your individual dredged material. The Corps can assess plans from its point of view for our projects. However, whether a management plan would be considered practicable by an individual marina would need to be made by that user.

The PMP contains the following statements that all parties that approved the PMP believe will allow the LIS DMMP to meet the requirements of the Designation Rule:

“To address the Designation Rule provision with respect to “standards”, the LIS DMMP will attempt to identify all the dredging needs, both Federal and non-Federal for all of the harbors in Long Island Sound and vicinity. The LIS DMMP will also identify potential environmentally acceptable, practicable management plans that can be utilized by various dredging proponents in their analysis of options to manage dredging projects. Although it is not the intention of the LIS DMMP to identify an alternative for every potential project in the study area the DMMP will provide users with an array of suitable/feasible options that they could use in their alternative analysis that will meet or exceed their needs. Also the States may use the DMMP findings to take whatever actions are necessary to establish or expand State programs to assist in implementing reductions in open water placement.”

At the Working Group meeting in March, we indicated that we had conducted an inventory of upland placement, beneficial use and dewatering sites. On the initial inventory, we conducted a screening to determine which sites might be viable for Corps of Engineers use. These sites received additional analysis to determine site capacity, site characteristics, etc. that would be used in further evaluation of their feasibility. The sites that were determined not to be suitable for Corps use also received the same type of assessment and a detailed report was prepared documenting the assessment. The reason that the detailed assessment was conducted on sites not useful to the Corps was to collect and provide information to other users that they could use in their alternative analysis in managing their dredged material. This is in line with the procedure that we identified in the PMP.

You indicated that it is your understanding that the State of New York determined that the proposed designation of ocean sites was inconsistent with that State’s Coastal Zone Management (CZM) Program. That in fact did occur. I have asked that the US Environmental Protection Agency provide me a copy of the State of New York’s letter regarding this issue so that it can be provided to you as you requested.

As part of the LIS DMMP the Corps of Engineers will develop a CZM program consistency determination for both the States of Connecticut and New York and will submit the CZM determination to those states for their concurrence.

The Multi-Criteria Decision Analysis (MCDA) that we propose to use for this project we believe is a very useful tool that will help us in alternative evaluation. I’m pleased that you concur that it could be helpful. One of the primary focuses of the Working Group will be to assist us in identifying various stakeholders desires and issues so that we can develop a MCDA model that will not only help us in our evaluation but hopefully make the results of the evaluation accepted by the various stakeholders since it was their input that was used to help refine the model. We will continue to discuss and work on the MCDA process at future Working Group meetings.

I hope that I have answered your questions and concerns. If you have any additional questions please contact me at 978-318-8087 or by email at Michael.f.keegan@usace.army.mil

Sincerely,

A handwritten signature in black ink that reads "Michael F. Keegan". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

Michael F. Keegan, P.E.; L.C.S.
Project Manager

Enclosure

Copy Furnished (via email):

Mr. Geoff Steadman
CHMA Representative to the LIS DMMP Working Group



Connecticut Harbor Management Association

April 15, 2011

Mr. Michael Keegan
Project Manager
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, Massachusetts 01742-2751

Subject: Long Island Sound Dredged Material Management Plan

CHMA Board Members

President

John Thomas Pinto, Ph.D.
Norwalk Harbor Mgmt Comm

Vice President

Mary von Conta
Fairfield Harbor Mgmt Comm

Secretary/Treasurer

Louis Allyn
Mystic Harbor Mgmt Comm

John Henningson
Guilford Harbor Mgmt Comm

Peter Holecz
Bridgeport Harbor Mgmt Comm

Don Landers
East Lyme Harbor Mgmt Comm

Devin Santa
Stratford Harbor Mgmt Comm

Joel P. Severance
Chester Harbor Mgmt Comm

Michael Griffin
Harbor Master Norwalk Harbor

Patrick Carroll (Alternate)
Harbor Master Southport Harbor

Geoffrey Steadman
Coastal Area Planning Consultant

John Roberge (Alternate)
Roberge Assoc. Coastal Engs, LLC

Dear Mr. Keegan:

The Board of Directors of the Connecticut Harbor Management Association (CHMA) wishes to thank you for the opportunity to participate in the process for preparing the Long Island Sound Dredged Material Management Plan (DMMP). We look forward to contributing to the development of an effective, evidence-based plan that will provide for sustainable use and conservation of the Sound and continued viability of the water-dependent uses that depend on dredging of federal navigation projects.

Following consideration of the information presented during the first meeting of the DMMP Working Group held on March 29 in Bridgeport, we wish to transmit comments and recommendations to you concerning the following topics.

1. Opportunities to Share Information Among Working Group Members: We believe it would be helpful for members of the Working Group to be able to share their comments and ideas during the course of the planning process. As a result, we recommend that the Corps of Engineers consider providing an opportunity for members of the Working Group to submit or electronically post comments that can be distributed to or otherwise read by the entire group.
2. Identification of DMMP Goals: Material provided at the first Working Group meeting states that "*The overall goal of the Long Island Sound DMMP is to develop a comprehensive dredged material management plan that recommends practicable, implementable solutions to man-*

age Corps of Engineers navigation dredged material in an economically sound and environmentally acceptable manner in Long Island Sound.” We are supportive of this goal, but it seems to be somewhat different than the DMMP goal established in conjunction with the 2005 designation of the Central Long Island Sound (CLIS) and Western Long Island Sound (WLIS) disposal sites by the U.S. Environmental Protection Agency. It is our understanding that the EPA’s Final Rule for designation of the CLIS and WLIS disposal sites provides the basis for the ongoing work to prepare the DMMP. The EPA’s Final Rule is published in the Federal Register / Vol. 70 / No. 106 / Friday, June 3, 2005 / Rules and Regulations, and includes the following amendment to part 228, chapter I of title 40 of the Code of Federal Regulations.

“...the disposal of dredged material at the CLIS and WLIS sites pursuant to this designation shall not be allowed beginning eight (8) years after July 5, 2005 unless a regional dredged material management plan (DMMP) for Long Island Sound has been completed by the North Atlantic Division of the USACE in consultation with the State of New York, State of Connecticut and EPA, with a goal of reducing or eliminating the disposal of dredged material in Long Island Sound [emphasis added by CHMA] ...” This mandate published in the Federal Register differs from the DMMP goal presented at the first Working Group meeting.

3. Discussion of Apparently Disparate Goals: While the CHMA Board does not believe that elimination of dredged material disposal in Long Island Sound is an appropriate solution to the current dredging issues, we believe that all members of the Working Group should be aware of the goal established by the EPA’s Final Rule.

We recommend that attention should be given at the next Working Group meeting to resolving the apparent disparity between the two, above-stated goals and reaching consensus among all Working Group participants regarding the project’s overall goal before additional time and effort on this important project are expended.

In addition, since the Final Rule for designation of the CLIS and WLIS disposal sites provides the basis for the work that we are now undertaking, we recommend that all members of the Working Group review the rule prior to the next Working Group meeting. The rule can be found at:

<http://edocket.access.gpo.gov/2005/pdf/05-10847.pdf>

4. Review of Previous York State Coastal Consistency Finding: It is our understanding that the EPA’s initial designation of the CLIS and WLIS disposal sites pursuant to the requirements of the Marine Protection, Research and Sanctuaries Act was determined by the State of New York to be inconsistent with the New York State Coastal Management Program. As a result of that determination and subsequent negotiations, the Final Rule concerning the disposal site designations was published by the EPA with the requirement for preparation of the DMMP within eight years of the designations.

For the purpose of better understanding the State of New York’s position regarding dredged material disposal in Long Island Sound, we suggest that a copy of New York

State's negative consistency finding with respect to the EPA's initial designation of the CLIS and WLIS disposal sites be made available for review by members of the Working Group. It is our hope that the dredging-related issues of concern to the State of New York can be addressed more effectively through the DMMP process than they were in the Environmental Impact Statement process for designation of the CLIS and WLIS disposal sites.

In addition, it is unclear to us if the DMMP will be subject to coastal zone consistency review by the states of New York and Connecticut or otherwise subject to approval by both states in order to meet the requirements set forth in the EPA's Final Rule. We therefore request that state requirements for approval of the DMMP be clarified at the next Working Group meeting.

5. Coastal Management Coordination: The CHMA Board has given significant consideration to the role of state coastal management programs for addressing Long Island Sound dredging issues. The federal Coastal Zone Management Act envisions coordination between coastal states such as Connecticut and New York sharing jurisdiction in a coastal water body. It is our experience that such coordination has historically been lacking with regard to Long Island Sound and this lack of coordination, in our opinion, has contributed significantly to the current dredging-related issues. For example, during a March 2004 meeting of the Connecticut Maritime Coalition's Dredge Task Force, a Deputy Commissioner of the Connecticut Department of Environmental Protection, in response to a question from a member of the CHMA Board, stated that there is no effective communication or working relationship between the coastal management programs of Connecticut and New York. In addition, that Commissioner remarked that if New York State opposed the EPA's designations of the CLIS and WLIS disposal sites, Connecticut's response would be to bring a legal action against New York. This admonition was apparently not productive.

In May 2004, Connecticut's Congressional delegation urged the Connecticut Department of Environmental Protection to pursue with New York State a diplomatic resolution to the issues affecting the EPA's designation of dredged material disposal sites in LIS. It is our understanding that no effective actions were pursued in response to the Congressional request.


It has long been our opinion that the Connecticut Department of Environmental Protection and the New York State Department of State—the coastal management agencies of the states of Connecticut and New York—should recognize their responsibility to work together cooperatively to address Long Island Sound-wide issues through coordinated and effective planning and coastal management initiatives. We recommend that such coordination and cooperation should be stated as a specific objective of the DMMP, and we hope that work on the DMMP will encourage and facilitate achievement of this objective.

6. Multi-Criteria Decision Analysis (MCDA): The CHMA Board supports the Corps of Engineers' use of the MCDA model for the purpose of aggregating stakeholder values and helping to guide the decision-making process. We recognize and appreciate the dili-

gence and expertise of the Corps' Engineer, Research and Development Center Team that will be developing and applying the model, and we are confident that they will do so in a beneficial way without bias. We look forward to participating in development of the criteria and metrics for the model.

Thank you for the opportunity to express our comments and concerns. We look forward to discussing them with you personally or in an open forum with the other stakeholders. We may be reached at the numbers and e-mail addresses below.

Sincerely,

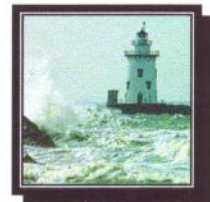

John Thomas Pinto, Ph.D.
President, CHMA

(914) 594-3332 (office phone)
(203) 984-5339 (mobile phone)
pintoj@optonline.net

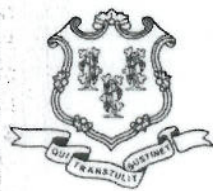


Geoff Steadman
CHMA representative to the DMMP Working Group
(203) 226-9383 (office phone)
(203) 515-6066 (mobile phone)
geoffreysteadman@att.net

JTP/GS/gs



AX-11-000-4943
DEP



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

79 ELM STREET HARTFORD, CT 06106-5127

PHONE: 860-424-3001



Daniel C. Esty
Commissioner

March 23, 2011

OFFICE OF THE
EXECUTIVE SECRETARIAT

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RECEIVED

Ms. Lisa Jackson, Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Jackson:

Thank you for your note and kind words about my appointment as Commissioner of the Connecticut Department of Environmental Protection ("CTDEP"). I look forward to working with you and your staff on a broad range of important environmental and energy issues. And I watch in great admiration for all that you are doing under very challenging conditions.

I would like to raise one matter of importance to Connecticut's environment and economy—the long overdue Supplemental Environmental Impact Statement ("SEIS") for potential designation of dredged material disposal sites in eastern Long Island Sound. Governor Malloy is committed to enhancing and maintaining the vitality of Connecticut's deepwater ports and maritime industry to foster economic growth, reduce our overreliance on trucks to transport goods, and create jobs. The ability to dredge our ports and dispose of dredged material in an environmentally responsible and cost-effective manner is critical to achieving that goal, and the ongoing availability of disposal sites in Long Island Sound is essential.

A key disposal site in eastern Long Island Sound, the New London Disposal Site, has not been designated by EPA under the Marine Protection, Resources and Sanctuaries Act and will cease to be available for all Federal and some important non-Federal dredging projects in October 2011. The loss of this site potentially adversely affects the Naval Submarine Base New London and many maritime businesses in eastern Connecticut. A second disposal site, Cornfield Shoals, is scheduled to close in 2013. Thus it is becoming increasingly urgent that EPA initiate the SEIS for potential designation of new disposal sites in eastern Long Island Sound.

If you have any questions regarding this effort, please contact me at (860) 424-3571, or on my cell phone at (203) 464 3749.

Yours truly,

Daniel C. Esty
Commissioner



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 26 2010

OFFICE OF
WATER

The Honorable Joseph I. Lieberman
United States Senate
Washington, DC 20510

Dear Senator Lieberman:

Thank you for your letter of December 4, 2009, asking EPA to initiate a Supplemental Environmental Impact Statement (SEIS) for the potential designation of a dredged material disposal site in eastern Long Island Sound (ELIS). Your letter expressed concern that the two existing available dredged material disposal sites in eastern Long Island Sound are due to expire in 2011 (New London) and 2013 (Cornfield Shoals). While we appreciate your concern, there are a number of issues that need to be addressed before such efforts can begin.

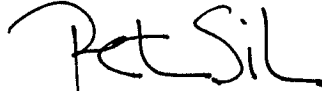
The Long Island Sound Dredged Material Management Plan (LIS DMMP) is an effort agreed to by EPA, the Corps, and the states of Connecticut and New York to fully review and assess the future dredging and disposal needs for Long Island Sound. As such, it is a critical part of the path forward. EPA believes that the information and results from the DMMP dredging needs and alternative studies will enable us to proceed appropriately. We reaffirm our commitment to working with the Corps and the states of Connecticut and New York to support completion of the LIS DMMP as soon as possible.

Another issue is the lack of funding available for the SEIS. EPA does not fund site designations through its budget process because they are conducted so infrequently. We are prepared to begin discussions, however, with all appropriate parties including the U.S. Army Corps of Engineers (Corps) and the U.S. Navy. While EPA does not need to be the lead agency on an SEIS, we are prepared to do so if that is the most effective way forward.

EPA will be convening a summit of high level officials from Region 1, Region 2, the Corps and both States in the coming weeks. You and your staff are welcome to attend. The summit would provide an important opportunity for EPA's new leadership to explore ways to work together to accelerate the completion of the LIS DMMP and to identify management approaches to reduce or eliminate ocean disposal while addressing the dredging needs for the Sound.

Please feel free to contact me, Curt Spalding, Regional Administrator for Region 1 at (617) 918-1012, or Ira Leighton, Deputy Regional Administrator for Region 1 at (617) 918- 1011 if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Pet Silva". The signature is stylized with a large, sweeping initial "P" and a long horizontal stroke.

Peter S. Silva
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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JAN 22 2010

OFFICE OF
WATER

The Honorable Amey W. Marrella
Commissioner
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Dear Commissioner Marrella:

Thank you for your letter of November 6, 2009, asking the U.S. Environmental Protection Agency (EPA) to initiate a Supplemental Environmental Impact Statement (SEIS) for the potential designation of a dredged material disposal site in eastern Long Island Sound (ELIS). Your letter expressed concern that the two existing available dredged material disposal sites in eastern Long Island Sound are due to expire in 2011 (New London) and 2013 (Cornfield Shoals). While we appreciate your concern, there are a number of issues that need to be addressed before such efforts can begin.

The Long Island Sound Dredged Material Management Plan (LIS DMMP) is an effort agreed to by EPA, the Corps, and the states of Connecticut and New York to fully review and assess the future dredging and disposal needs for Long Island Sound. As such, it is a critical part of the path forward. EPA believes that the information and results from the DMMP dredging needs and alternative studies will enable us to proceed appropriately. We reaffirm our commitment to working with the Corps and the states of Connecticut and New York to support completion of the LIS DMMP as soon as possible.

Another issue is the lack of funding available for the SEIS. EPA does not fund site designations through its budget process because they are conducted so infrequently. We are prepared to begin discussions, however, with all appropriate parties including the U.S. Army Corps of Engineers (Corps) and the U.S. Navy. While EPA does not need to be the lead agency on SEIS, we are prepared to do so if that is the most effective way forward.

We have discussed the LIS DMMP and the Eastern LIS SEIS with senior management in EPA Regions 1 and 2. With new regional administrators on board, the Regions believe this is an opportune time to convene a meeting of high-level officials from EPA, the Corps, and the states of Connecticut and New York, to discuss many longstanding issues related to dredged material



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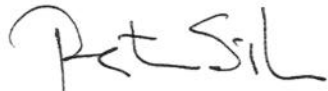
Internet Address (URL) • <http://www.epa.gov>

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management in Long Island Sound. The meeting would provide an important opportunity for EPA's new leadership to explore ways to work together to accelerate the completion of the LIS DMMP and to identify management approaches to reduce or eliminate ocean disposal while addressing the dredging needs for the Sound. EPA Region 1 will be contacting you shortly to schedule this meeting.

Please feel free to contact Curt Spalding, Regional Administrator for Region 1 at (617) 918-1012, or Ira Leighton, Deputy Regional Administrator for Region 1 at (617) 918- 1011 if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Pet Silva". The signature is stylized with a large, looping "P" and a long horizontal stroke.

Peter S. Silva
Assistant Administrator

cc: Colonel Feir, US ACE, New England District
H. Curtis Spalding, EPA Region 1
Judith Enck, EPA Region 2

Congress of the United States

Washington, DC 20515

December 4, 2009

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency (EPA)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We write today to ask for your assistance in addressing a critical issue for our state: the initiation of a supplemental Environmental Impact Statement (SEIS) for the designation of dredged sediment disposal sites in the eastern Long Island Sound (LIS).

There are presently four dredged sediment disposal sites in Long Island Sound. The EPA, under the Marine Protection, Research and Sanctuaries Act, designated two open-water dredged material disposal sites in western Long Island Sound to provide long-term, environmentally acceptable disposal options for potential use by federal, state, municipal and private entities that must dredge channels, harbors, marinas and other aquatic areas in Long Island Sound.

However, EPA has not designated the two eastern LIS sites for long term use. Instead, the Army Corps of Engineers has designated the use of these sites only on an interim basis. Without designation by EPA, the New London and Cornfield Shoals sites will close in 2011 and 2013, respectively. As a result, all federal dredging projects, and some non-federal projects, will be denied access to these sites – cutting off dredging and harbor maintenance projects that are critical to ensuring safe navigation and facilitating marine commerce.

The urgency of this issue was recently underscored when the New York Department of State (NY DOS) objected to the use of the New London site for maintenance dredging at US Naval Submarine Base New London. On November 2, 2009, NY DOS denied the publicly noticed project for consistency with its coastal zone management plan, in part challenging the interim designation of the New London disposal site. While we believe that New York's decision is misguided and flawed, the lack of designation of the site and the urgency of dredging at SUBASE New London have left our state and the Navy with little recourse.

We are deeply concerned that this decision essentially closes the New London site nearly two years before it is due, and will have serious repercussions for coastal communities in our state. Without designation of long term disposal sites in the eastern LIS, communities, businesses and the SUBASE will face increased costs for the transport of dredge material to the western sites. And, closing the site puts in


doubt necessary dredging of federal channels, as well as needed non-federal projects.

EPA has previously committed to move ahead with a Supplemental Environmental Impact Statement (SEIS), subject to the availability of the necessary funding. We hope you share our concern and urgency for this project, and ask that you make the SEIS for the designation of eastern LIS disposal sites a priority as you prepare the EPA's fiscal year 2011 budget request. We remain committed to working with you on this important issue, and securing the necessary funds for this important project.

We look forward to your consideration and response to our request, and continuing to work with you on this important issue.

Sincerely,

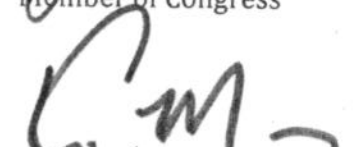

CHRISTOPHER J. DODD
United States Senator



JOSEPH I. LIEBERMAN
United States Senator


ROSA L. DeLAURO
Member of Congress

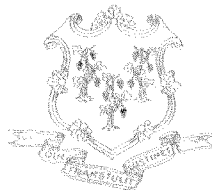

JOHN B. LARSON
Member of Congress


JOE COURTNEY
Member of Congress


CHRISTOPHER S. MURPHY
Member of Congress


JAMES A. HIMES
Member of Congress

Cc: ☒ Dr. Peter Orszag, Director, Office of Management and Budget (OMB)
☒ Col. Philip T. Feir, Commander, New England Region, US Army Corps of Engineers
M. Jodi Rell, Governor, State of Connecticut
Joan McDonald, Commissioner, Connecticut Department of Economic and Community Development
Amey Marrella, Commissioner, Connecticut Department of Environmental Protection
Bob Ross, Executive Director, Connecticut Office of Military Affairs



M. Jodi Rell
GOVERNOR
STATE OF CONNECTICUT

November 17, 2009

Senator Joseph I. Lieberman
706 Hart Senate Office Building
Washington, DC 20510

Dear Senator Lieberman:

I wish to express my sincere thanks to all the members of the Connecticut Congressional delegation for your successful efforts to ensure that funding for the development of the Long Island Sound Dredged Material Management Plan (DMMP) was included in the FY10 budget bills passed in both chambers and signed by the President.

This marks the third consecutive year that this important project has benefited from your support and vigilance. Thanks to your efforts, the Corps now has \$6.89 million of the \$12 million it needs to complete the DMMP. As you know, with the 2013 deadline for DMMP completion looming less than four years away, we must all maintain our vigilance to ensure the Corps receives the remaining \$5 million it needs over the next three fiscal years to meet the 2013 completion date.

I must also ask for your support in securing prompt funding for the Environmental Protection Agency (EPA) to undertake a Supplemental Environmental Impact Statement (SEIS) for the designation of dredged sediment disposal sites in eastern Long Island Sound. By way of background, the two existing eastern Long Island Sound disposal sites have not been designated by EPA and are available for properly managed disposal only on an interim basis. Without completion of the SEIS and site designation by EPA, a critical disposal site near New London will cease to be available in September 2011 for all federal and some important non-federal dredging projects. The other interim eastern LIS disposal site will cease to be available in September 2013, absent EPA action. EPA has agreed to undertake the SEIS process concurrently with the development of the DMMP, as soon as the necessary funding is available.

Even the interim status of the two eastern disposal sites has been questioned through a recent New York action. On November 2, 2009, the New York Department of State (NYDOS) objected to the use of the New London site by the United States Navy for a vital maintenance dredging project at the New London submarine base. NYDOS denial of federal consistency was based partially on their assertion that the New London disposal site is not properly designated. Their decision creates a new impediment and added cost to upgrading and maintaining the waterfront facilities of this strategic military installation. In addition, the loss of these disposal sites would severely increase the costs faced by coastal communities and Connecticut Maritime dependent

businesses in southeast Connecticut, such as Dow Chemical, due to increased transportation costs for dredge material to more distant disposal sites.

I cannot emphasize enough that failure to promptly and adequately fund both the DMMP and SEIS endeavors will result in serious environmental and economic consequences for Connecticut's coastal communities, ports and maritime dependent businesses. Your continued efforts to secure funding for these projects would be greatly appreciated. If you have any questions regarding this effort, please contact Amey Marrella, my Commissioner of Environmental Protection, at (860) 424-3001. Again, thank you for your continued support.

Yours truly,

A handwritten signature in cursive script, reading "M. Jodi Rell". The ink is dark and the signature is fluid, with a large, sweeping "M" and a long, trailing "Rell".

M. Jodi Rell
Governor

MJR/gw

cc: Commissioner Amey Marrella



STATE OF NEW YORK

DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

Mr. Andrew J. Stackpole
Environmental Division Director
U.S. Department of the Navy
Naval Submarine Base New London
Groton, CT 06349-5000

November 2, 2009

Re: **F-2009-0645(DA)**

U.S. Department of the Navy-SUBASE New London-proposed maintenance dredging at Naval Submarine Base New London with placement of ~170,000 cubic yards (cy) of contaminated material at a CAD cell constructed within the navigation channel in the Thames River and the disposal of ~230,000 cy of dredged material at the New London Disposal Site (NLDS) in Long Island Sound (LIS).

Objection To Consistency Certification

Dear Mr. Stackpole:

The New York State, Department of State (DOS) has completed its evaluation of the U.S. Department of the Navy's (Navy) consistency determination relating to the disposal of dredged material at the New London Disposal Site (NLDS). Pursuant to 15 CFR § 930.41(a), DOS objects to the consistency determination on the basis that the Navy's proposal to dispose of the Confined Aquatic Disposal (CAD) cell material at the NLDS is not consistent to the maximum extent practicable with the enforceable policies of the New York State Coastal Management Program (CMP).

Subject of the Review:

The Navy requests consistency concurrence to perform maintenance dredging within the Thames River at the SUBASE New London, Groton, Connecticut. Maintenance dredging will take place to restore pier areas to the authorized depth of 36ft. below mean lower low water (MLLW). The area between piers 15 and 17 contains a floating drydock berth with an authorized depth of 60 ft. below MLLW. The resultant 170,000 cy of material is proposed to be disposed of within a CAD cell created within the Thames River federal navigation channel. DOS has determined that this part of the project is consistent with the enforceable policies of the New York CMP.

The construction of the CAD cell will include the removal of approximately 249,300 cy from a 400' x 630' area excavated to -40', plus an allowable 2' overdredge depth, below the bottom of the channel (-40' MLLW), for a total CAD cell depth of 82' below MLLW. The top two feet excavated from the CAD cell area (approximately 19,300 cy) will be stockpiled for later re-use as cap for the CAD cell. DOS has determined that this part of the project is consistent with the enforceable policies of the New York CMP.

After creating the CAD cell, the Navy plans to dispose of 230,000 cubic yards of the excavation material into the waters of the Long Island Sound at NLDS. The dredged “parent” material is comprised of 50/50 silt and clay. DOS has determined that this part of the project will have reasonably foreseeable effects on the NYS Coastal Area and has found it to be inconsistent with the enforceable policies of the New York Coastal Management Program (NY CMP).

Project Purpose:

The stated purpose for the activity is to allow for the continued use of the SUBASE piers and the drydock berth.

Jurisdiction:

The Coastal Zone Management Act (CZMA) authorizes a coastal state to review activities, in or outside of the coastal zone affecting any land or water use or natural resource of the coastal zone, undertaken directly by a federal agency or requiring federal agency authorizations, for their consistency with the enforceable policies of the state's approved Coastal Management Program (CMP).¹ Interstate consistency review is also authorized where a federal action occurring in one state will affect uses or resources of another state's coastal zone.² The Navy's proposed dredging and dredged material disposal are subject to the consistency provisions of the CZMA, and are required to be consistent to the maximum extent practicable with the enforceable policies of the New York CMP.³

New York's consistency review authority applies to the Connecticut side of Long Island Sound. In 2006, the New York Department of State submitted to the US Department of Commerce's Office of Coastal Resource Management (OCRM) a list of activities that are permitted, licensed, or otherwise approved by the U.S. Army Corps of Engineers located within the State of Connecticut to be subject to interstate consistency review by the State of New York.⁴ These activities were part of New York's approved list of federal license or permit activities and subject to federal consistency review by New York, but the change included an expanded geographic area in Connecticut, encompassing almost the entirety of Long Island Sound (LIS)

¹ 16 U.S.C. § 1456.

² See 15 C.F.R. Part 930 Subpart I.

³ See 15 C.F.R. § 930.32(a)(1)(3).

⁴ The federal permit activities are pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (permits for ocean disposal of dredged material).

and Fishers Island Sound. On March 28, 2006, the OCRM approved the interstate list, making New York the first state to receive interstate approval for consistency review.⁵ On June 20, 2006, OCRM approved the Connecticut Coastal Program amendment, giving that state similar interstate consistency review authority in the New York portion of Long Island Sound.

The DOS is authorized to review the consistency of all federal agency actions as well as permit actions involving dredged material disposal in LIS beyond the -20 ft bathymetric contour line closest to the Connecticut shoreline. Applicants for federal permits to dispose of dredged material are required to affirmatively provide to DOS a consistency certification pursuant to the Coastal Zone Management Act.⁶ Federal agencies cannot issue permits until that consistency review has been completed.

Similarly, under 15 C.F.R. part 930, subpart C, a federal agency is obligated to provide DOS with a consistency determination when it disposes of sediment in LIS, as these activities are reasonably likely to affect land or water uses or natural resources of the coastal zone.⁷ Federal agencies must provide their consistency determinations for listed federal agency activities to New York “at the earliest practicable time in the planning or reassessment of the activity.”⁸ New York does not need to request OCRM approval to review listed federal activities in the Connecticut portion of LIS beyond the -20 foot bathymetric contour.⁹

In 2002, OCRM approved designation of the LIS as a regional "special management area" under the New York CMP. The resulting Long Island Sound Coastal Management Program (LIS CMP), with its 13 coastal policies, comprehensively focuses on the economic, environmental, and cultural characteristics of the LIS coastal region. Because the proposed disposal of dredged material at the NLDS would be conducted within the area covered by the State and federally

⁵ <http://coastalmanagement.noaa.gov/consistency/media/NYinterstateapproval.pdf>.

⁶ 16 U.S.C. §1456.

⁷ See 15 C.F.R. § 930.155(a) “The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.; see also 15 C.F.R. 930.34(a)(1).

⁸ 15 C.F.R. § 930.36 (a). “The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal agency activity unless both the Federal agency and the State agency agree to an alternative notification schedule.”

⁹In 2006, the Navy failed to follow the consistency review process when it disposed of the sediments from the CAD cell for the SUBASE project at NLDS. The Navy violated the CZMA when it conducted the dredged material disposal without obtaining a consistency concurrence from New York State. The Navy also failed to provide NY with a consistency determination for the current proposal until NY specifically requested the Navy’s submission in a letter dated July 22, 2009.-

approved LIS CMP, which contains the enforceable policies of the NY CMP for this region, this proposal has been evaluated for its consistency with the enforceable policies of the LIS CMP.¹⁰

Factors Relevant to the Review:

New London Disposal Site:

The New London Disposal Site is located in New York and Connecticut in about 70 feet of water at the junctures of Fishers and Long Island Sounds on the northeastern side of the eastern basin of LIS. Approximately 1/3 of the NLDS is located within the territorial waters of the State of New York, and is situated approximately 1.5 miles west of Fishers Island in the Town of Southold, Suffolk County, New York. The NLDS is within close proximity to several NYS designated and federally approved Significant Coastal Fish and Wildlife Habitats (SCFWH),¹¹ and recreational and commercial fisheries of regional significance. NLDS is centered at 41° 16.3' N, 72° 04.6' W.

The eastern basin of LIS includes the area between Six Mile Reef to the west and The Race to the east. Ocean waters flow into the Sound as bottom currents and water leaves the Sound as surface currents through the constricted eastern entrance, and near the location of the NLDS. Incoming ocean waters upwell along the Connecticut shore and move oceanward via a counterclockwise gyre along the Long Island Shore. At the eastern edge of the Sound, extending approximately 5 to 8 km westward from The Race, there is a large area of erosion or non-deposition, likely caused by a combination of strong tidal currents and a net westward movement of sediments into the estuary.¹² Current speeds in the eastern basin are the strongest observed in the Sound.¹³ These current velocities have been measured at 62-82 cm/sec¹⁴ and are sufficient to erode silt and sand, and prevent deposition of silt and clay.¹⁵ There is a paucity of

¹⁰ See 33 C.F.R. § 325.2(b)(2). “the district engineer shall forward a copy of the public notice to the agency of the state responsible for reviewing the consistency of federal activities. The federal agency applicant shall be responsible for complying with the CZM Act's directive for ensuring that federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved CZM Programs.”

¹¹ www.nyswaterfronts.com.

¹² ENSR International 2001. Physical Oceanographic Evaluation of Long Island Sound and Block Island Sound. DEIS for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound. September 2003. U.S. Environmental Protection Agency, New England Region, Boston, MA. U.S. Army Corps of Engineers, New England Division, Concord, MA. Appendix G1. Section 2.1.2

¹³ Id.

¹⁴ Long E.E. 1978 Tide and Tidal Current Observations from 1965 through 1967 in Long Island Sound, Block Island Sound and Tributaries. NOS Oceanographic Circulatory Survey Report No. 1:91 pages.

¹⁵ Hjultstrom, F. 1935. Studies of the morphological activity of rivers as illustrated by the River Fyris. Univ. Uppsala Geol. Inst. Bull 25: 221-557.

silt and clay sized particles in surface sediments (0-25%) in the eastern basin reflecting the high energy current resuspension of fine sediment.¹⁶

In this consistency review, the Navy did not provide any analysis of the substantial environmental impacts of dredged material disposal at NLDS. The Disposal Area Monitoring Program (DAMOS)¹⁷ periodically monitors the NLDS using bathymetric surveys, sediment profile imaging and plan view imaging to verify the locations of disposal mounds, monitor any changes to the mounds, as well as to track the re-colonization of the mounds by benthic communities. The Corps recently provided DOS staff with a study of a NLDS disposal mound (DAMOS monitoring report #180) constructed between 2000 and 2006. The DAMOS monitoring report focused on mound NL-06 sediment from the time it left the barge until the survey was taken 8 months later. The study revealed that between 35% and 50% of the disposed material is missing and unaccounted for. This absence of material verified that the sediments disposed of at NLDS are transported rapidly and disappear quickly, indicating a very unstable, fast moving marine environment, which is unsuitable for disposal.

Even though the current Navy proposal involves the disposal of allegedly clean sediment on this occasion, recent dumping events at NLDS have involved the disposal of contaminated sediments, much of which cannot be accounted for. Furthermore, the report did not provide an assurance that the fine grained material in the proposed disposal contains sufficient coarse sediment to develop a surface lag that would result in long term stability of the mound in such a dynamic environment. The Navy's current proposal involves Thames River sediments which have been minimally tested for their chemical or toxic properties. Cumulative effects tests have not been conducted to measure the levels of contamination released from capped mounds by fauna, food chain effects, or bioaccumulation at NLDS. Over the longer term, such effects could be having impact on resources in New York.

LIS is the only embayment in the nation's territorial sea in which the Marine Protection Research & Sanctuaries Act, also known as the Ocean Dumping Act (ODA), applies. In 1980, Congress amended the ODA to subject the dumping of dredged material in Long Island Sound by federal agencies, or by private parties dumping more than 25,000 cubic yards of dredged material, to the site selection, site designation and environmental testing criteria of the ODA¹⁸ For private projects less than 25,000 cubic yards, the Clean Water Act standards apply. The ODA amendment was enacted because disposal of dredged material had been taking place in LIS, without regard to the cumulative environmental effects on that water body. The ODA authorizes the Environmental Protection Agency (EPA) Administrator, in conjunction with the Corps, to designate sites where ocean disposal may be permitted.¹⁹

¹⁶ NYS DOS Seawolf Decision Letter, F-1995-138.

¹⁷ The Corps is the administrator of the DAMOS program, which was begun in 1977 by the New England District of the US Army Corps of Engineers to manage and monitor offshore dredged material disposal sites from Long Island Sound to Maine.

¹⁸ 33 U.S.C. § 1416(f). The ODA amendment was proposed in order to "amend existing law to consider the Long Island Sound as ocean waters for the purpose of ocean dumping regulation." H.R. Rep. No. 894, Part 1, 96th Cong., 2d Sess. 2 (1980).

¹⁹ 33 U.S.C. § 1412.

Open water disposal in LIS is constrained by federal law, as well as public concerns about impacts to marine resources. Congressional history confirms that the ODA was made applicable to the LIS to afford greater protection to the marine environment from open water disposal than was otherwise available under the Clean Water Act.²⁰ In practice, however, dredged material disposal in the Sound has continued unconstrained by the stricter environmental standard. Recognizing Connecticut's legitimate economic need to routinely dredge its rivers does not require the expansion of open water disposal in the Sound through the formal designation of additional disposal sites in the Sound, rather than seeking alternative disposal options.

NLDS is not legally authorized for open water disposal of the Navy's sediments. The EPA Administrator has not designated it as a dredged material disposal site under 33 U.S.C. § 1412. The Navy and the Corps have indicated that NLDS was temporarily designated for short term use to receive dredged material under an ODA section which authorizes use of a non-designated site for two five year periods when the use of designated sites is not feasible and certain criteria are met.²¹

NLDS was not properly selected for short term use. Under the ODA, site designation is part of the permit evaluation process.²² The Corps was required to follow the criteria in 40 C.F.R. §227 and §228 when selecting dredge disposal sites. This process entails a public comment process,²³ environmental analysis²⁴ and, in this case, consistency review by the states of New York and Connecticut. This public process was not followed for NLDS. Public notice of the selection was not published in the Federal Register. When evidence of the designation was recently requested by DOS, the Corps produced a document labeled "internal memorandum" dated April 5, 2005, which purportedly was sent to the EPA, selecting NLDS for the disposal of 187,000 cubic yards of material for the initial CAD cell work in 2006. The internal document was kept from public comment and the consistency review process.²⁵ Nor was a public environmental analysis²⁶ conducted for the purported NLDS site selection in 2005, which might have provided the public and interested agencies another opportunity to review and comment on the permit and the

²⁰ See 33 U.S.C. § 1416(f).

²¹ See 33 U.S.C. § 1413.

²² See 33 U.S.C. §§ 1412 and 1413.

²³ The Secretary's issuance of permits for "the transportation of dredged material for the purpose of dumping it in ocean waters" can only occur "after notice and opportunity for public hearings." 33 U.S.C. § 1413 (a).

²⁴ See 33 U.S.C. § 1413(b) sets forth the process by which the Secretary is to evaluate the dredge material by first applying the environmental criteria in section 1412(a) relating to the effects of dumping.

²⁵ The April 5, 2005 internal memo information, which included an analysis of the site selection factors are required pursuant to 40 C.F.R. §§ 228(e)(4), 228.5 and 228.6, was never released to the public as required by 33 C.F.R. § 230.10(a).

²⁶ See 33 C.F.R. §§ 230.4, 230.7(a), 40 C.F.R. §§ 1508.1, 1508.9, and 1508.10.

Secretary's site selection as required by law.²⁷ The current use of NLDS as a disposal site selected for the Navy's sediments pursuant to ODA is unauthorized and is otherwise only available for the disposal of dredged material from non-federal projects under the total volume of 25,000 cubic yards. Moreover, the ODA requires the use of EPA designated sites before alternative sites can be considered.²⁸

Alternative Disposal Sites for the CAD Cell Material:

On June 3, 2005, the EPA Administrator designated two disposal sites in Long Island Sound pursuant to 33 U.S.C. § 1412: the Western Long Island Sound Disposal Site (WLIS) and the Central Long Island Sound Disposal Site (CLIS).²⁹ Once these two sites were designated, all open water disposal projects in the vicinity of the Sound were mandated to use them or another designated site unless, following an exhaustive analysis of criteria under 33 U.S.C. § 1413(b), use of the designated sites was determined to be infeasible.³⁰ Both CLIS and WLIS have Site Management and Monitoring Plans (SMMPs) and are suitable locations to accept the Navy's dredged sediment.

Applicable Long Island Sound CMP Policies:

²⁷ The Corps's NEPA implementing regulations are contained at 33 C.F.R. Part 230. The district commander is responsible for making this determination and for keeping the public informed of the availability of the [Environmental Assessment] EA and [Finding of no significant impact] FONSI; see also 42 U.S.C. § 4332; 40 C.F.R. Part 1500. The site selection process of a dredge disposal location is not listed as a categorical exemption in 33 C.F.R. 230.9 and, therefore the April 5, 2005 internal memo was to have been produced in the form of a NEPA document and released to the public for review and comment.

²⁸ The Secretary of the Army, in assessing the need for ocean disposal, was to the maximum extent practicable, to "utilize the recommended sites designated by the Administrator pursuant to section 1412(c)." 33 U.S.C. § 1413(a). "In the case of dredged material disposal sites, the Administrator, in conjunction with the Secretary, shall develop a site management plan for each site designated pursuant to this section." 33 U.S.C. § 1412(c).

²⁹ In accordance with EPA's Statement of Policy for Voluntary Preparation of National Environmental Policy Act documents for all ocean disposal site designations (Federal Register 62(229): 63334-63336, October 29, 1998), EPA issues this Notice of Intent to prepare an EIS for the Designation of Dredged Material Disposal Sites in Long Island Sound, offshore of Connecticut, and New York. 64 Fed. Reg. 29865-01. The June 3, 2005, final rule also included restrictions intended to reduce or eliminate the disposal of dredged material in Long Island Sound. See 70 Fed. Reg. 32498-01.

³⁰ See 33 U.S.C. § 1413(b). "Disposal at or in the vicinity of an alternative site shall be limited to a period of not greater than 5 years unless the site is subsequently designated pursuant to 33 USC § 1412(c); except that an alternative site may continue to be used for an additional period of time that shall not exceed 5 years if—

- (1) no feasible disposal site has been designated by the Administrator;
- (2) the continued use of the alternative site is necessary to maintain navigation and facilitate interstate or international commerce; and
- (3) the Administrator determines that the continued use of the site does not pose an unacceptable risk to human health, aquatic resources, or the environment."

POLICY 5: Protect and Improve Water Quality and Supply in the Long Island Sound Coastal Area.

5.3 Protect and enhance the quality of coastal waters.

The guidance for sub-policy 5.3 states “Protect water quality of coastal waters from adverse impacts associated with excavation, fill, dredging, and disposal of dredged material.” The Navy’s proposal to dispose of 230,000 cubic yards of Thames River sediments at NLDS will have the effect of smothering benthic life and degrading the marine environment both at the site and in the surrounding area. This amount of fill material is the equivalent of placing a layer of sediment across 129 football fields at one foot thickness. Stated another way, it is equivalent to providing one foot of fill for approximately 145 acres of tidal wetlands which could be restored if the material were properly disposed of at a suitable intertidal location. The significance of the impacts associated with dredged material disposal at, and adjacent to, the NLDS will be substantial.

Given the high current velocities and unstable nature of sediment in the vicinity, adverse impacts are anticipated at the NLDS and adjacent areas as a result of the dredged material disposal activities. In addition to direct physical impacts, chemical impacts can include, but are not limited to: reduced dissolved oxygen in the water column during disposal activities; increased carbon dioxide, acidity, dissolved solids, nutrients, and organics within the water column during and after disposal activities. Chronic plumes and frequent resuspension of particles are also expected due to the fine grained nature of the material and the high current energy documented in the eastern basin. These factors are likely to cause physical disturbances to the site and surrounding areas that may result in biological and chemical effects. No information assessing these potential impacts resulting from the proposed disposal was provided, leaving DOS to conclude that there is substantial risk to the environment from this proposal.

According to the DAMOS special technical report entitled “Analysis of the Contribution of Dredged Material to Sediment and Contaminant Fluxes in Long Island Sound,” the remolding phase of a disposal mound involves compaction and local erosion until an equilibrium of grain-size distribution is attained and a mound can be considered armored. “With silt or clay caps or uncapped mounds, this condition may be attained only after considerable erosion.”³¹ As discussed below, monitoring data indicates a significant loss of dredged material in just 8 months, and in this case persistent erosion of the clay/silt material is expected since coarse material is virtually absent from all of the core samples taken for this project. Furthermore, DAMOS report # 180, which examined the NL-06 mound in 2007, noted that 8 months after disposal, “There was a very thin layer of sand (thinner than at NEREF) over silt/clay and the grain size major mode was >4 phi at every station. At many stations the consolidated clay was exposed at the surface.”³² This indicates that a lag layer had yet to fully form and thus resuspension, with water quality and physical impacts, is still ongoing.

With a paucity of coarse sediment, development of a suitable lag covering might take years and significant erosion of dredged material from this proposed project will have occurred. Given

³¹ SAIC. 1994. Analysis of the Contribution of Dredged Material to sediment and Contaminant Fluxes in long Island Sound. June 1994. DAMOS Contribution No. 88. U.S. Army Corps of Engineers, New England District, Concord, MA. p. 11.

³² AECOM. 2009. Monitoring Survey at the New London Disposal Site, July / August 2007. DAMOS Contribution No. 180. U.S. Army Corps of Engineers, New England District, Concord, MA, 80pp. (p 75.)

the instability due to current speeds at NLDS, the fine sand and shells that accumulate on the surface of mounds is not adequate lag material and thus insufficient to prevent material resuspension, especially during storm events.

As described in 40 CFR §228.15(4) and (5), the WLIS and CLIS have been evaluated for the significance of physical and chemical impacts as part of the designation process. As a result of the physical and environmental studies performed, the level of impairment at these locations as a result of their use as disposal sites has been judged to be acceptable. The NLDS has not undergone similar environmental studies and the significance of the impacts associated with dredged material disposal at, and adjacent to, the NLDS has not been evaluated or determined. While studies have been done to monitor the physical and to some extent, the chemical characteristics of the disposal mounds, biological and chemical parameters have not been evaluated to the extent that demonstrates that there will be no effects on the ecology of LIS. Monitoring of NLDS has typically performed well after disposal has taken place, but does not reflect real-time measurements during the disposal activities, and does not illustrate the extent of plume dispersion and resuspension of sediment at the site as a result of disposal activities.

In the DAMOS monitoring report prepared for NLDS, the U.S. Army Corps of Engineers (“Corps”) states that given the 277,000 m³ disposed at the NL-06 mound by November 2006, “The NL-06 Mound is expected to measure approximately 500-600 m in diameter with an elevation of 3-4 m...” Following actual field surveys of the mound, which were measured 8 months after the last disposal event, “The NL-06 Mound was approximately 4 m in height (elsewhere in the document elevation was cited as 3.6 m), similar to the predicted height: but the overall footprint (575m long x 250 m wide) was smaller than the predicted mound diameter of 500-600 m.”³³ This conclusion is likely that dredged material either was lost during the disposal events, or was eroded from the site subsequent to disposal. As noted earlier, DOS calculates that approximately 35% to 50% of the disposed material at NL-06 was no longer in the mound 8 months after the November 2006 disposal. The reason material was lost and the fate of that material is likely due to the strong currents. The missing sediment could have traveled and had physical and chemical impacts outside the disposal area. To date, the Corps has not produced information to refute this valid assumption. Much of the sediment disposed of and capped at NL-06 was highly contaminated (perhaps as much as 100,000 m³). The “precautionary principle” of ecosystem management makes it clear that “[w]hen an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.”³⁴ It is appropriate to apply this principle for the benefit of the environment of Long Island Sound. The proposal is therefore inconsistent with this policy.

POLICY 6: Protect and Restore the Quality and Function of the Long Island Sound Ecosystem.

6.2 Protect and restore Significant Coastal Fish and Wildlife Habitats.

6.4 Protect vulnerable fish, wildlife, and plant species, and rare ecological communities.

6.5 Protect natural resources and associated values in identified regionally important natural areas.

³³ AECOM. 2009. Monitoring Survey at the New London Disposal Site, July/ August 2007. DAMOS Contribution No. 180. U.S. Army Corps of Engineers, New England District, Concord, MA, 80pp. (p. 76).

³⁴ www.mindfully.org/Precaution/Precautionary-Principle-Common-Sense.htm.

Given the high risk of environmental impacts from disposal of dredged material at NLDS, Policy 6 and the listed sub-policies and the guidance for sub-policy 6.2, which states: “Protect Long Island Sounds designated significant coastal fish and wildlife habitats (SCFWH) from uses or activities which would destroy habitat values or significantly impair the viability of the designed habitat beyond its tolerance range which is the ecological range of conditions that supports the species population or has the potential to support a restored population where practical” cannot be assured.

The NLDS is located approximately 1.5 miles from Fishers Island, NY, where there are several NYS-designated SCFWH(s). To the east of the NLDS are the “Fishers Island Beaches, Pine Islands and Shallows” and the “Dumpling Islands and Flat Hammock,” in which intertidal areas provide significant foraging, spawning and nesting areas for many species of fish, birds and colonial waterbirds. To the southeast of the NLDS is “The Race” which, due to its location, provides one of two major migratory routes through the Sound, provides significant spawning, nursery and foraging areas, and supports a nationally significant recreational fishery as well as a regionally significant commercial lobster fishery. There are several other SCFWH(s) in the vicinity of the NLDS and Fishers Island where breeding and foraging endangered and threatened species benefit from the diversity of flora and fauna produced within in this dynamic ecosystem and adjacent SCFWH(s). Given the relatively high current velocities and unstable character of the eastern portion of the Sound, the disposal of materials at this site could impair or affect these nearby habitats and this nationally significant estuary by: direct physical alteration, disturbance, or pollution of the area through indirect biological and chemical effects of disposal. Habitat destruction could be facilitated by increasing sedimentation; impairing the habitat by reducing vital resources (food, shelter, living space, light) or changing the environmental conditions (substrate) beyond the tolerance range of marine organisms. Additional discussions of foreseeable effects on these SCFWH(s) are discussed in the analysis of Policy 11. Any alteration and/or impact to these valuable habitats effects the availability and viability of food sources and resources within the Sound and associated SCFWH(s), contravene the intentions of this policy and must be avoided.

The guidance for sub-policy 6.5 states “Protect natural resources comprising a regionally important natural area... Adhere to management plans prepared for regionally important natural areas.” 33 U.S.C. § 1412(c)(3) requires that EPA designated sites must undergo the development of a SMMP as part of the designation process. The NLDS, which is located within a estuary of national significance, is not an EPA-designated site determined eligible to receive dredge material, and accordingly does not have a management plan in place.³⁵

The effects of disposal on several regionally important habitats located within relatively close proximity to the NLDS have not been studied. The potential for fine sediment dispersion, as well as resuspension of sediment due to storm events are high within LIS.³⁶ On page 24 of DAMOS

³⁵ In accordance with 33 U.S.C. § 1412(c)(3), the EPA completes a site management plan for each of its designated sites and this is done in consultation with the Corp. The EPA-designated sites, CLIS and WLIS, have SMMP’s in place for the management and receipt of dredge disposal material. The NLDS is an undesignated site and accordingly does not have a SMMP in place to manage the receipt of dredge material disposed at the site, including an evaluation of cumulative impacts.

³⁶ SAIC. 1994. Analysis of the Contribution of Dredged Material to sediment and Contaminant Fluxes in Long Island Sound. June 1994. DAMOS Contribution No. 88. U.S. Army

Special Technical Report “Analysis of the Contribution of Dredged Material to Sediment and Contaminant Fluxes in Long Island Sound,” it predicts that there is a maximum expected dispersion loss of 6.0% during disposal activities, a 0.06% mound remolding loss, and during a hurricane, scouring loss of 15.8%. In total, there is a potential 21.86% loss of material. If this value is applied to the current proposal, that accounts for 51,808 cubic yards of material that could be impacting the ecosystem of Long Island Sound outside of the disposal area. The significance of the impacts associated with dredged material disposal at, and adjacent to, the NLDS has not been adequately determined so as to remove reasonable doubt of environmental harm. The proposal is therefore inconsistent with this policy.

POLICY 10: Protect Long Island Sound’s Water-Dependent Uses and Promote Siting of New Water-Dependent Uses in Suitable Locations.

Policy 10.6 Provide sufficient infrastructure for water-dependent uses.

The guidance for sub-policy 10.6 states “Use suitable dredged material for beach nourishment, dune reconstruction, or other beneficial uses. Avoid placement of dredged material in LIS when opportunities for beneficial reuse of the material exist.” While the alternatives analysis for the pier area material is quite comprehensive, the alternative uses sought for the CAD cell material have not been discussed. The potential for beneficial use of this material has not been addressed and alternative options may exist. The stated cohesive nature of the material could make it suitable for use in construction projects, aggregates, or as structural fill, however, the lack of alternatives analysis for the CAD cell material provides insufficient information for the assessment of the effect(s) on coastal policy.

Additionally, the Regional Dredging Team (RDT) was created as a result of the settlement resulting in the preparation of the DMMP and the EPA Final Rule for the CLIS and WLIS designations. The jurisdiction of the RDT for review of projects extends to all eligible projects proposed within the entire LIS region in order to be consistent with the goal of the DMMP to eliminate or reduce disposal of dredged material in Long Island Sound.

Policy 10.6 requires “... sufficient infrastructure for water-dependent uses.” Infrastructure, in the form of a designated disposal site at CLIS and WLIS has been provided by the EPA. These sites have gone through environmental analysis and preparation of management plans and are deemed appropriate sites for use pending completion of the DMMP. However, this proposal ignored the existing designated sites and chose to utilize a site that has not been designated and has not undergone adequate environmental review or preparation of a management plan. This proposal is therefore inconsistent with this policy.

POLICY 11: Promote Sustainable Use of Living Marine Resources in Long Island Sound.

11.1 Ensure Long-term maintenance and health of living marine resources.

11.2 Provide for commercial and recreational use of the Sound’s finfish, shellfish, crustaceans, and marine plants.

The guidance for sub-policy 11.1 states “Foster occurrence and abundance of Long Island Sound’s marine resources by: protecting spawning grounds, habitats, and water quality; and enhancing and restoring fish and shellfish habitat, particularly for anadromous fish, oysters, and hard clams.” The guidance for policy 11.2 states “Maximize the benefits of marine resource use so as to provide a valuable recreation resource experience and viable business opportunities for commercial and recreational fisheries... Protect the public health and the marketability of marine and fishery resources by maintaining and improving water quality.”

As stated in the explanations of Policies 5 and 6 above, and unlike the CLIS and WLIS where evaluations of the effects of the disposal of dredged materials have been performed and have been determined to be acceptable until the completion of the LIS DMMP, adequate studies on the cumulative effects on the biological communities at and adjacent to the NLDS have not been undertaken and the effects on the resources and sustainable uses of this region have not been adequately addressed. Long Island Sound is an invaluable resource capable of sustaining numerous uses, however, insufficient information exists for the assessment of the effect(s) of dredged material disposal at the NLDS on the Sound's resources and sustainable uses, and on coastal policy. Biological effects to organisms due to physical and chemical disturbances that would effect the sustainable uses of the Sound include, but are not limited to: food chain effects such as bioaccumulation of contaminants in organisms; a decrease, or even an increase, in fecundity due to habitat disturbances, foraging capacity and chronic toxicity; abandonment of habitats, spawning, nursery and foraging areas due to frequent disturbances and degradation of the underlying infrastructure. High chemical oxygen demand (COD) of disposed sediments can cause significant reductions in dissolved oxygen levels of the overlying water column, causing mortality in sessile organisms. This results in the elimination of foraging material for many species, which then causes abandonment of the area, thus affecting the food chain. Recolonization of the mounds within the disposal site is well documented through the DAMOS program, as are the acute and short-term effects of disposal. However, depending upon the biological and chemical effects of previously disposed sediments upon those organisms, as well as their effects throughout the food chain, recolonization may not be desirable because it could be a continuing source of food chain contamination. Without current and continued data collection for these chronic long-term effects, educated assessments of these effects can not be made. The proposal is therefore inconsistent with this policy.

Conclusion

Given the foregoing, which highlights the unstable nature of NLDS as a disposal site leading to substantial risk of environmental harm to the resources of New York, and the lack of substantial proof to the contrary, this proposal is not be consistent with the NY CMP as it is expressed in Policies 5, 6, 10 and 11 of the Long Island Sound CMP.

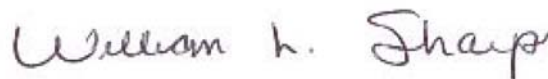
Alternatives

Pursuant to 15 C.F.R. § 930.43(a)(3), the Department of State may identify alternatives, if they exist, which, if adopted would allow an activity to proceed in a manner that is consistent to the maximum extent practicable with the enforceable policies of the CMP. Several alternatives exist that are consistent with the CMP and may include, but are not limited to: disposal of the CAD cell materials at any of the EPA designated open-water disposal sites that have a gone through the 33 U.S.C. § 1412 designation process and have a current SMMP; use in aggregates; upland filling, such as the USACE application # NAE-2008-2372 (project entitled "Northeast Armed Forces Reserve Center"); mined land reclamation; remediation of Brownfield Areas; construction activities; landfill contouring, capping and closure; use as remediation at the HARS. The submitted dredged material alternatives analysis, in support of your consistency determination, states that disposal of the pier materials at CLIS is feasible. This alternative disposal location would be an acceptable alternative for the CAD cell material and would be consistent with the NY CMP.

Pursuant to 15 C.F.R. § 930.43 and §930.112, you may attempt to resolve these issues with DOS, or request Secretarial Mediation from the U.S. Department of Commerce. Given that the mediation process may be lengthy, if you would like to continue discussions with this office while pursuing mediation, please call Mr. Fred Anders at (518) 473-2477.

The U.S. Department of Commerce is being notified of this decision by copy of this letter.

Sincerely,

A handwritten signature in dark ink, reading "William L. Sharp". The signature is written in a cursive, slightly slanted style. The first name "William" is followed by a middle initial "L." and the last name "Sharp".

William L. Sharp
Deputy Secretary of State

GRS/jls

cc: US Department of the Navy - Richard Conant
US Department of the Navy – Captain Marc W. Denno
OCRM - David Kennedy, Director
OCRM - David Kaiser, Chief, Coastal programs Division
OCRM - John King
OCRM - Helen Farr
COE/New England District - Diane Ray, Timothy J. Dugan
COE/New York District - Randall G. Hintz, Richard Tomer
USEPA Region 1 - Ira W. Leighton, Acting Regional Administrator
USEPA Region 2 – George Pavlou, Acting Regional Administrator
Connecticut DEP – B. Thompson, G. Wisker, M. Grzywinski (#200900894-MG)
NYSDEC Central Office - John Ferguson
NYSDEC Region 1 - Rover Evans
NYSDEC Region 2 - John Cryan



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

October 6, 2009

Amey W. Marrella, Commissioner
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Dear Commissioner Marrella:

Thank you for your letter of September 29, 2009, asking EPA New England to reaffirm its commitment to undertake the studies necessary to support a Supplemental Environmental Impact Statement (SEIS) for the potential designation of a dredged material disposal site in Eastern Long Island Sound (ELIS). EPA is prepared to move ahead on an SEIS and related studies if adequate funding is provided to carry out the effort.

Your letter also asks whether EPA funding is or will be available for this effort. Although we anticipate needing approximately \$5 million to complete the EIS, there is no funding available in EPA's budget to conduct these studies at this time. EPA typically does not have money dedicated to support site designation studies through its budget process because they are conducted so infrequently.

We believe the Long Island Sound Dredged Material Management Plan (DMMP) is also very important, and we also would like to reaffirm our commitment to working with the U.S. Army Corps of Engineers and the states of Connecticut and New York to support completion of the DMMP by 2013. EPA will consider the results of the dredging needs, alternatives, and other relevant studies being conducted through the DMMP process in any future SEIS for Eastern Long Island Sound.

Please feel free to contact me or Lynne Hamjian, acting director of our Office of Ecosystem Protection, at (617) 918-1601 if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Ira W. Leighton", is positioned above the typed name.

Ira W. Leighton
Acting Regional Administrator

cc: Colonel Feir, US ACE
George Pavlou, Acting Regional Administrator – EPA Region 2

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COUNTY OF SUFFOLK

Rec'd Coastal Resources



STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PUBLIC WORKS

THOMAS LAGUARDIA, P.E.
CHIEF DEPUTY COMMISSIONER

GILBERT ANDERSON, P.E.
COMMISSIONER

LOUIS CALDERONE
DEPUTY COMMISSIONER

August 12, 2009

Ms. Jennifer Street, Coastal Resources Specialist
Division of Coastal Resources
New York State Department of State
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231-0001

RE: Dredging Information for the Long Island Sound and Peconic Bay Tributaries

Dear Ms. Street:

I am in receipt of your April 9, 2009 letter requesting data for the dredging projects located within the above referenced bodies of water.

This office has compiled the attached reports listing each channel, the dredge completion dates, approximate cubic yards and type of material that was dredged and removed.

If you have any questions or require additional information concerning this matter, please do not hesitate to contact this office at 631-852-4078.

Very truly yours,

WILLIAM HILLMAN, P.E.
CHIEF ENGINEER

By:

Robert H. Whelan, P.E., Director
Bridges/Structures/Waterways

WH/JDB/klc

enc.

cc: William Hillman, P.E., Chief Engineer

SUFFOLK COUNTY IS AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

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YAPHANK, NY 11980

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

Memorandum

Date: May 12, 2009
Subject: The Eastern Boundary of "Long Island Sound" for Purposes of Section 106(f) of the MPRSA, 33 U.S.C. § 1416(f)
From: Mark A. Stein, Senior Assistant Regional Counsel
Melville P. Coté, Chief, Oceans and Coastal Protection Unit,
Office of Ecosystem Protection
To: Michael F. Keegan, PE; L.C.S., Project Manager, New England District, US Army Corps of Engineers

I. Introduction

On January 16, 2008, you sent a letter to Jeffrey Fowley, an attorney in US EPA Region 1's (Region 1) Office of Regional Counsel. Your letter forwarded an undated comment letter that the US Army Corps of Engineers (Corps) had received from William C. Spicer, III, of Spicer's Marinas (Mr. Spicer). As you explain, Mr. Spicer's letter submits comments in response to the "Public Scoping Meetings in Connecticut and New York associated with the Long Island Sound Dredged Material Management Plan and the Programmatic Environmental Impact Statement being prepared as part of that project." Among other things, Mr. Spicer's letter presents his proposal for what should be considered the eastern boundary of "Long Island Sound" for the purpose of section 106(f) of the Marine Protection, Research and Sanctuaries Act (MPRSA), 33 U.S.C. § 1416(f) (MPRSA § 106(f)).

Your letter indicates that you sent Mr. Spicer's letter (and attachments) to EPA "[i]n light of USEPA's primary role in implementing MPRSA," and you request our "review and opinion on his theory regarding the applicability of the Ambro Amendment [(i.e., MPRSA § 106(f))] to waters east of the Race in Long Island Sound."¹

II. Issue Presented

¹ Mr. Spicer's letter argues that Long Island Sound should be comprised only of waters north and west of the Race.

The issue addressed by this memorandum is where to locate the eastern boundary of “Long Island Sound,” *as that term is used in MPRSA § 106(f)*. More specifically, what is EPA’s view of the boundary proposed by Mr. Spicer? And if EPA does not endorse this proposal, where should the boundary be located according to EPA?

III. Brief Summary of Conclusions

Mr. Spicer’s proposed boundary runs approximately northeast from Orient Point through Plum Island, Great Gull Island and Little Gull Island, and then turns northward to run through Bartlett’s Reef on its way to the mainland of Connecticut (*see* Figure 1, Spicer Line). Having carefully reviewed the matter, EPA disagrees with Mr. Spicer’s proposal for where to locate the eastern boundary of “Long Island Sound” for the purposes of MPRSA § 106(f). Such a boundary would be inconsistent with EPA’s best understanding of the Congressional intent behind MPRSA § 106(f), the boundary used by the United States in the past, and facts cited in federal court decisions. Additional considerations, discussed below, also cut against the new boundary line proposed by Mr. Spicer.

Having rejected the Spicer Line, EPA further concludes that the eastern boundary of Long Island Sound under MPRSA § 106(f) should presently be regarded to track the pre-1985 “base line” from which the territorial sea is measured (*see* Figure 1, Old Base Line). The Old Base Line runs northeasterly from Orient Point, through Plum Island, Great Gull and Little Gull Islands, Fishers Island, and over to Napatree Point, RI. EPA concludes that the Old Base Line should presently be considered to provide the eastern boundary of Long Island Sound because it is most likely the boundary that Congress specifically had in mind when it enacted § 106(f), and because EPA and the Federal Government have previously interpreted this particular line to represent the Sound’s eastern boundary for the specific purpose of MPRSA § 106(f) and for other purposes as well.

Having reached this conclusion regarding the Old Base Line, EPA also concludes that in the future it could consider the alternative of regarding the eastern boundary of the Sound under MPRSA § 106(f) to track the *current* base line from which the territorial sea is measured (*see* Figure 1, “Present Base Line”). A 1985 Supreme Court decision moved the base line to the east so that it now runs from Montauk Point, NY, to Watch Hill, RI. *United States v. Maine*, 469 U.S. 504, 526 (1985). While using the Present Base Line would involve a change in EPA’s past interpretation of the Sound’s eastern boundary under MPRSA § 106(f), EPA concludes that the ambiguity of the statutory language leaves it open to EPA to consider such a change.

IV. Discussion

a. MPRSA § 106(f)

The MPRSA regulates, among other things, the dumping of dredged material into “ocean waters.” *See, e.g.*, MPRSA § 103(a), 33 U.S.C. § 1413(a). Under the MPRSA, “ocean waters” are defined, in pertinent part, as “those waters of the open seas lying seaward of the base line from which the territorial sea is measured” MPRSA § 3(b), 33 U.S.C. § 1402(b). Thus, the MPRSA does not generally apply to dredged material disposal into waters *landward* of the base line from which the territorial sea is measured (base line). Waters landward of the base line constitute “internal waters.” For internal waters under the jurisdiction of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), dredged material disposal is generally governed by CWA § 404, 33 U.S.C. § 1344.

In December 1980, however, Congress amended the MPRSA to add § 106(f). *See* P.L. 96-752. MPRSA § 106(f) is often referred to as the “Ambro Amendment,” after one of its primary sponsors, Representative Ambro of New York. The provision states as follows:

(f) Dumping of dredged material in Long Island Sound from any Federal, etc., project

In addition to other provisions of law and notwithstanding the specific exclusion relating to dredged material in the first sentence in section 1412(a) of this title, the dumping of dredged material in Long Island Sound from any Federal project (or pursuant to Federal authorization) or from a dredging project by a non-Federal applicant exceeding 25,000 cubic yards shall comply with the requirements of this subchapter.

33 U.S.C. § 1416(f). Thus, the Ambro Amendment imports the MPRSA’s requirements for dredged material disposal into “Long Island Sound” both for federal projects and for non-federal projects involving the disposal of more than 25,000 cubic yards of material.

Therefore, the term “Long Island Sound” as used in MPRSA § 106(f) is a legal term of art that helps to identify a category of projects subject to the MPRSA’s dredged material disposal requirements. The term “Long Island Sound” is not, however, self-defining, and neither the MPRSA nor EPA’s regulations thereunder define the term. In other words, the precise meaning of the term Long Island Sound as used in MPRSA § 106(f) is ambiguous and open to reasonable

interpretation by EPA.² *See, e.g., Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-45 (1984) (courts will defer to interpretations of ambiguous legal provisions by administrative agency charged to administer the statute)

b. Mr. Spicer's Proposal for the Eastern Boundary of Long Island Sound under MPRSA § 106(f)

Mr. Spicer's letter (at p. 4) suggests that the eastern boundary of Long Island Sound under MPRSA § 106(f) should "start at Little Gull Island and proceed through Bartlett's Reef to the Connecticut mainland." As indicated above, EPA assumes that Mr. Spicer's proposed boundary would actually first begin at Orient Point and run through Plum Island on its way to Little Gull Island, after which it would turn northward and run through Bartlett's Reef on its way up to the Connecticut mainland. Mr. Spicer also asserts (at p. 4) that "BLOCK ISLAND SOUND, GARDINERS BAY, THE RACE, FISHERS ISLAND SOUND AND NEW LONDON HARBOR are not part of LONG ISLAND SOUND" (capitalization in the original).

Mr. Spicer points to a variety of considerations in support of his conclusions. After first (at p. 1) offering a characterization of the geological evolution of Long Island Sound and other nearby waters, he states that "[t]he body of water west of THE RACE and north of the eroded remains of the moraine (Great Gull Island, Plum Island and the north fork of Long Island) and south of the Connecticut mainland, man called Long Island Sound." He also states (at p. 1) that "the body of water north of Fishers Island and south of the Connecticut mainland and east of THE RACE, man called Fishers Island Sound," and further (at p. 2) that "[s]outh of the eroded moraine man called the body of water west of Gardiners Island to be Gardiners Bay and the body of water east of Gardiners Island to be Block Island Sound." Essentially, Mr. Spicer seems to argue both that the geological history of the area supports his proposed eastern boundary for Long Island Sound, and that because, as he tells it, all these various areas of water have commonly been called different things in the past, none could be considered a part of Long Island Sound for the purposes of MPRSA § 106(f).

² The State of Connecticut's Office of the Attorney General ("CT AG") reached a similar conclusion in a December 16, 2008, letter from CT AG Richard Blumenthal to Joseph Riccio, Vice-Chairman, Connecticut Maritime Commission (CT AG's Letter). The CT AG's Letter explains that "[a]s you stated in your letter, there is some difficulty in determining the precise delineation of the eastern boundary of Long Island Sound and, accordingly, the western boundaries of Block Island Sound and Fisher's Island Sound." In support of this conclusion the letter cites *Warner v. Dunlap*, 532 F.2d 767, 769 (1st Cir. 1976), in which the U.S. Court of Appeals for the First Circuit stated that "[t]he exact boundaries of Block Island Sound are uncertain," and specifically noted uncertainty regarding the western boundary of Block Island Sound. *See id.* nn. 9 and 10.

Mr. Spicer also argues that a 1999 legislative proposal to amend MPRSA § 106(f) to expressly cover both Block Island Sound and Fishers Island Sound indicates that those areas of water were *not* previously considered part of “Long Island Sound” under MPRSA § 106(f). Finally, Mr. Spicer also seems to argue, in essence, that the boundary he proposes would make good policy sense because it would minimize the reach of “Long Island Sound” under MPRSA § 106(f) and that this is desirable because § 106(f) was ill-advised to begin with. In other words, Mr. Spicer seems to argue that the Ambro Amendment should be given the narrowest possible application because it was, in his opinion, a bad idea.

c. Statutory Language

“Long Island Sound” as used in MPRSA § 106(f) is a legal term of art used for jurisdictional purposes – *i.e.*, for demarcating the waters covered by § 106(f) – and it need not necessarily track the meaning of the term “Long Island Sound” as used for other purposes. As stated above, the MPRSA does not define the boundaries of “Long Island Sound” as that term is used in the statute. In the absence of a statutory definition, it is reasonable and appropriate to apply any generally accepted meaning of the terms used in the statute. The dictionary is commonly used to identify any such generally accepted meaning of statutory terms.

Merriam-Webster’s Dictionary,³ in pertinent part, defines a “sound” as:

- 1) “a long broad inlet of the ocean generally parallel to the coast,”
- 2) “a long passage of water connecting two larger bodies (as a sea with the ocean)”; or
- 3) a long passage of water “separating a mainland and an island”

Arguably, all three of these definitions of a “sound” could be considered satisfied whether the Old Base Line, the Present Base Line or the Spicer Line was used as the eastern boundary of Long Island Sound. Using each of these lines would yield a Long Island Sound that could be characterized as a long, broad inlet of the ocean paralleling the coast of Connecticut. Each line would create a Long Island Sound that could be characterized as a long passage of water, in combination with the East River and New York Harbor, that connects the Atlantic Ocean east of the Sound to the Atlantic Ocean west and south of the Sound. Finally, all three lines would result in a Long Island Sound that separates the Connecticut mainland from some or all of the following islands: Long Island (North and South Forks),⁴ Plum Island, Great and Little Gull Islands, and Fishers Island.

³ Merriam-Webster’s Dictionary online at <http://www.merriam-webster.com/dictionary/sound>[5].

While each of the lines might reasonably satisfy the definition of a sound, there are some key differences in the way that each line would define Long Island Sound. The Present Base Line would provide the only boundary that would include the waters lying between the South Fork of Long Island and the mainland. Given the definition of a sound, it could make sense to include those waters. The only reason for their exclusion that EPA can identify would be that some of those waters have historically been considered to be waters of Block Island Sound. Mr. Spicer's letter suggests as much. Yet, this is not particularly compelling for several reasons. First, as stated above, there is no clear western boundary of Block Island Sound and it would not make sense to treat one part of the water between the Old Base Line and the Present Base Line as Long Island Sound and the remaining part as Block Island Sound because it would be unclear where to divide them. Second, these particular waters seem to better fit the above-quoted definitions of a sound when considered in conjunction with the South Fork of Long Island than when they are considered relative to Block Island. In other words, these waters seem more naturally to be thought of as dividing the South Fork of Long Island from the mainland of Connecticut than as separating Block Island from the mainland of Connecticut. Third, there is no reason why any conflict could not be resolved simply by considering all or some of these waters to be part of both Long Island Sound and Block Island Sound.

The primary problem with using the Old Base Line is that it would exclude from the Sound the waters that lie between the South Fork and the mainland. The Old Base Line seems to define Long Island Sound only with reference to the North Fork. This may have made sense when the Old Base Line was in effect for the purpose of measuring the territorial sea because all the waters seaward of that line were considered "ocean waters" already subject to the MPRSA. It probably makes less sense now that the base line has been moved to the east.

Putting the issue of the South Fork aside, the Old Base Line is otherwise a reasonable boundary. It runs from the tip of the North Fork of Long Island at Orient Point in a straight line across what are now Plum Island, the Gull Islands and Fishers Island, all the way to the mainland. This line tracks the geological moraine that, as discussed below, once existed in the area. While this is not the only straight line that could be drawn to the mainland from Orient Point, it is a reasonable line to use because it encloses the entire Connecticut coastline rather than drawing the line to end at some otherwise arbitrary point on the Connecticut coast. While using the Old Base Line would result in the waters of Long Island

⁴ See *United States v. Maine*, 469 U.S. 504, 517-518 (1985) (in federal/state boundary dispute, Court ruled that "Long Island, which indeed is unusual, presents the exceptional case of an island which should be treated as an extension of the mainland.").

Sound overlapping the waters of Fishers Island Sound, there is no reason that this should not be the case.

The Spicer Line would exclude from Long Island Sound an even larger portion of the waters lying between the South Fork and the mainland. While it would avoid any overlap of Long Island Sound and either Block Island Sound or Fishers Island Sound, it would also exclude from Long Island Sound waters that are plainly not part of either of the two other sounds. There is no obvious rationale for doing so. The Spicer Line does not seem to be a straight line and the point at which it connects to the Connecticut mainland appears to be selected arbitrarily. As a result, it seems to provide an arbitrary demarcation of Long Island Sound.

In sum, the language of MPRSA § 106(f) does not dictate where the eastern boundary of Long Island Sound should be drawn. Any of the three options discussed herein could potentially satisfy the dictionary definition of a sound, but only the Present Base Line would include the waters lying between the South Fork and the mainland of Connecticut.

d. Legislative History of MPRSA § 106(f)

When statutory terms are ambiguous or unclear, the statute's legislative history may contain information about how Congress intended the terms to be interpreted. The legislative history behind the 1980 reauthorization of Title I of the MPRSA contains significant discussion regarding § 106(f). This discussion does not, however, directly address what ought to be considered the eastern boundary of Long Island Sound under § 106(f). What it does do is clearly indicate that Congress regarded the MPRSA's requirements governing dredged material disposal to be more stringent than the requirements under CWA § 404,⁵ and that Congress wanted the more stringent MPRSA requirements, generally applicable only to "ocean waters" (*i.e.*, waters seaward of the baseline), also to apply to the internal waters of Long Island Sound. *See Huntington v. Marsh*, 859 F.2d at 1138-39 (2d Cir. 1988).

Congressman Ambro explained § 106(f) as follows:

. . . This section is the result of many hours of discussion and
compromise between members in both houses covering our common
goal of protecting that most wonderful estuary, Long Island Sound.

*

*

*

⁵ Congress noted that EPA and the Corps were endeavoring to adjust the two programs so that they would operate more similarly. *See* 126 Cong. Rec. 31919 (remarks of Congressman Studds) (Dec. 3, 1980). The effort to make the standards of the two programs more similar continues today.

The effect of section 4 [(which was codified at MPRSA §106(f))] is to apply the testing criteria of the Ocean Dumping Act to either any Federal dredging project in the sound or to any non-Federal project exceeding 25,000 cubic yards; for private projects involving less than 25,000 cubic yards of dredge material, the testing criteria of the Clean Water Act will continue to apply. Because the Ocean Dumping Act criteria are more environmentally stringent than the Clean Water Act criteria, these changes will afford to the sound the same protection currently afforded ocean waters.

In essence, section 4 says, "If dredged material is too polluted to be dumped in the ocean, it is also too polluted to be dumped in Long Island Sound."

126 Cong. Rec. 34063 (P.L. 96-572) (House concurs with Senate Amendments) (Dec. 13, 1980). Of course, for our purposes, this begs the question of which waters Congress was referring to when it used the term "Long Island Sound."

While the legislative history does not specify what Congress intended the boundaries of Long Island Sound to be, it does seem to suggest that Congress expected that MPRSA § 106(f) would cause the statute's requirements to apply on both sides of the base line in the area of the Sound. At the time of § 106(f)'s enactment in 1980, the Old Base Line was in effect. *See* NOAA, National Ocean Survey Chart for Block Sound and Approaches, No. 13205 (26th Ed. Feb. 21, 1981). This *suggests* that Congress likely considered the eastern boundary of Long Island Sound to track the Old Base Line so that the MPRSA requirements would apply on both sides of that line.⁶

Certainly, the legislative history provides no suggestion that when Congress enacted § 106(f) to apply MPRSA requirements to Long Island Sound it wanted or thought that the MPRSA would apply to all waters seaward of the Old Base Line (*i.e.*, ocean waters), but only to some of the waters immediately landward of the baseline. It is hard to imagine that the legislative history would not have discussed it if Congress had intended that the MPRSA not be applied to some of the waters landward of the baseline, such as the waters of Fishers Island Sound or the waters in the area east of the Spicer Line, west of the Fishers Island Sound and north of the Old Base Line. Thus, it is highly unlikely that Congress intended the eastern

⁶ *See* 126 Cong. Rec. 10774 (remarks of Representative Forsythe: "We only propose to require that all dredge spoils dumped in the sound be at least as safe as we would dump in the ocean. It is hard to believe that some would argue that for mere economic gain that we should continue to allow the dumping of material which cannot pass minimum safety criteria for ocean disposal into the inland waters of the United States.") (May 12, 1980).

boundary of Long Island Sound for the purpose of MPRSA § 106(f) to track the Spicer Line.

An interesting question is how Congress would have intended “Long Island Sound” to be interpreted under MPRSA § 106(f) in light of the United States Supreme Court’s ruling in *United States v. Maine*, 469 U.S. 504, 526 (1985). In that case, the Supreme Court held that the Old Base Line should be replaced with the Present Base Line lying farther to the south and east, as described above. See NOAA, National Ocean Survey Chart for Block Sound and Approaches, No. 13205 (36th Ed. Apr. 14, 2001). If the Old Base Line remains the eastern boundary of Long Island Sound for purposes of § 106(f), then MPRSA requirements would apply to waters west and north of the Old Base Line, and to the (ocean) waters south and east of the Present Base Line, but not to the roughly triangular area of water between the two lines (and roughly bordered to the west by Gardiners Bay).⁷ This result would create a complex patchwork of on-again, off-again MPRSA jurisdiction that it seems unlikely Congress would have intended. Given that Congress left the definition of Long Island Sound ambiguous under § 106(f), it has been left open to EPA to consider reinterpreting the eastern boundary of Long Island Sound to be coterminous with the Present Base Line. (This option is discussed further below.)

Mr. Spicer’s letter also addresses certain legislative history. Specifically, he points to failed efforts in 1999 to amend MPRSA § 106(f) to expressly include Fishers Island Sound and Block Island Sound as evidence that Congress never intended any part of Fishers Island Sound or Block Island Sound to be included within the term “Long Island Sound” under § 106(f). While the proposed amendments could be read in the manner proposed by Mr. Spicer, they also could be read merely to indicate that the sponsors of the proposed amendments wanted to *reaffirm* or *clarify* that Block Island Sound and/or Fishers Island Sound were already intended to be covered by the reference to Long Island Sound in § 106(f). Indeed, the title of the proposed amendments remained “Long Island Sound,” and the Congressional letters provided by Mr. Spicer that argue against the proposed amendments criticize the application of the MPRSA to “Long Island Sound” without separately mentioning Fishers Island Sound or Block Island Sound. These facts could be viewed to suggest that Block Island Sound and Fishers Island Sound were already considered part of Long Island Sound. It should also be noted that the proposal to amend § 106(f) did more than just expressly reference Block Island Sound and Fishers Island Sound. It also proposed to add additional procedural requirements for projects covered by § 106(f). As a result, opposition or support

⁷ Even if the Present Base Line was also considered the eastern boundary of Long Island Sound the waters of the harbors and rivers connecting to the Sound would not need to be considered to be part of the Sound itself under § 106(f). Such waters could be considered tributary to, but landward of, the Sound. (See 2002 Fishers Island Settlement Agreement discussed below).

for the proposed amendments may have been prompted by considerations other than whether or not Fishers Island Sound and/or Block Island Sound were covered.

Ultimately, the proposed amendments were not enacted and EPA concludes that failed efforts to amend § 106(f) nearly 20 years after its enactment do not provide persuasive evidence of how Congress intended the term Long Island Sound to be interpreted.

e. Federal Government's Past Practice

i. United States v. Maine

In *United States v. Maine*, 469 U.S. 504 (1985), the United States litigated with the states of Rhode Island and New York before the United States Supreme Court over where the boundary should be drawn between internal state waters and ocean waters for federal/state jurisdictional purposes in the vicinity of Long Island Sound and Block Island Sound. In other words, the case resolved a dispute over where to locate the base line from which the territorial sea is measured. MPRSA § 106(f) was not at issue in the case, but while addressing the base line question, the United States identified its general view of the location of the eastern boundary of Long Island Sound. It did so because it believed that the seaward edge of the Sound should also, for various reasons, constitute the base line.

Thus, the Report of the Special Master in the case stated (at p. 7) that:

[t]he United States admits that the waters of Long Island Sound are historic internal waters and asserts that they should be closed by baselines across the Race entrance at the eastern end of Long Island Sound, from Orient Point on Long Island to Plum Island, from Plum Island to Race Point on Fishers Island, and from Fishers Island to Napatree Point, Rhode Island.

In other words, the United States favored retaining the Old Base Line. Rhode Island and New York disagreed and argued for a new base line located well to the east, seaward even of the Present Base Line.⁸ As it turned out, the Supreme Court disagreed with both proposals and held that the base line lay between the lines proposed by the litigants. The Court ruled that the base line was a straight line running northeast from Montauk Point on the tip of the South fork of Long Island

⁸ The States sought a base line drawn from Montauk Point, to Block Island, to Point Judith, RI, which would have created a larger area of internal waters.

to the mainland at Watch Hill Point in Rhode Island.⁹ 469 U.S. at 510-512, 526. In other words, the Supreme Court decision dictated that the Present Base Line would supplant the Old Base Line for federal/state jurisdictional purposes.¹⁰

At the same time, the Court in dicta appeared to accept the United States' definition of Long Island Sound. Specifically, the Court stated that the waters to the west of the new base line were a "juridical bay" and internal waters comprised of Long Island Sound *and* a portion of Block Island Sound. 469 U.S. at 526. If one accepts that any of the waters west of the Present Base Line can be part of Block Island Sound and not also a part of Long Island Sound, then the most obvious dividing line between Long Island Sound and Block Island Sound would be the Old Base Line. There is no other clear place at which to demarcate the western reach of Block Island Sound once it extends past the Present Base Line, and it would not make sense to consider any of the waters to the north and west of the Old Base Line to be part of Block Island Sound. Furthermore, the parties and the Court all seemed to accept that the waters north and west of the Old Base Line, including Fishers Island Sound, were all part of Long Island Sound.

As stated above, *United States v. Maine* did not address MPRSA § 106(f) and, therefore, is not necessarily binding for the present question. Nevertheless, the arguments made by the United States, and the findings of fact and rulings of law by the Court, tend to support rejection of the Spicer Line and selection of the Old Base Line as the eastern boundary of Long Island Sound under MPRSA § 106(f). Alternatively, *United States v. Maine* could be viewed to support selection of the Present Base Line as the eastern boundary of Long Island Sound if one decides that the base line and the eastern boundary of the Sound should be coterminous. In that case, the Court's ruling in favor of a new base line would also result in a new boundary for Long Island Sound. Indeed, since there is no obvious, defined location for the western boundary of Block Island Sound, *see Warner v. Dunlap*, 532 F.2d at 769 nn. 9 and 10, one could argue that Block Island Sound should not extend westward past the Present Base Line because it would then reach into the area between the South Fork of Long Island and the mainland, which from the perspective of the dictionary definitions more naturally would be thought of as being part of Long Island Sound. Alternatively, one might also argue that there could be an area of overlap between Long Island Sound and Block Island Sound in the area east of the Old Base Line and west of the Present Base Line.

⁹ Watch Hill Point and Napatree Point, as mentioned above, are two points in relatively close proximity to each other in Rhode Island.

¹⁰ The United States had indicated that if the Court rejected the Old Base Line, then the United States believed the Present Base Line would be the next most appropriate option, rather than the option proposed by the states.

ii. Settlement Agreement in *Fishers Island v. Corps of Engineers*

On June 18, 2002, the United States and the plaintiffs in litigation concerning the proper application of MPRSA § 106(f) entered a Settlement Agreement resolving the case of *Fishers Island v. Corps of Engineers* (No. CV-95-4374) (E.D.N.Y.), AP-00-6284 (2d Cir.) (2002 Fishers Island Settlement Agreement). While the question of the correct eastern boundary of Long Island Sound was not contested in the case, the 2002 Fishers Island Settlement Agreement nonetheless defined the boundaries of Long Island Sound “for purposes of this Settlement Agreement,” stating that:

[r]eferences to “Long Island Sound” or “the waters of Long Island Sound,” for the purposes of this Settlement Agreement, shall mean a body of water constituting an arm of the Atlantic Ocean. The Sound is bordered on the East by those portions of the base line from which the territorial sea is measured extending from the eastern end of Plum Island to Race Point at the western end of Fishers Island and continuing from East Point on Fishers Island northeasterly to Napatree Point. It is further bordered on the West by the eastern mouth of the East River, on the South by the North shore of Long Island, and on the North by the South shore of the States of Connecticut and New York. This definition, however, expressly excludes: 1) any area within a harbor bordering the waters described; 2) Rhode Island waters; and 3) any waters upriver of the mouth of any river flowing into the waters described in this paragraph.

2002 Fishers Island Settlement Agreement, p. 2, ¶ 6. This definition tracks the Old Base Line and the eastern boundary of Long Island Sound identified by the Federal Government in *United States v. Maine*.

While this definition clearly supports considering the Old Base Line to constitute the eastern boundary of Long Island Sound, it is not necessarily binding on that point. The text of the document states that the definition is only offered for the purpose of the settlement agreement. Moreover, the text of the definition suggests that the drafters were unaware that the Old Base Line had been supplanted by the Present Base Line in 1985 as a result of *United States v. Maine*. Specifically, the definition in the 2002 Fishers Island Settlement Agreement refers to the eastern boundary of the Sound as consisting of “those portions of the base line from which the territorial sea is measured” running northeast from Orient Point through the various islands and up to Napatree Point, but the base line no longer ran along that line as a result of *United States v. Maine*. It had been moved to the line from Montauk Point, NY, to Watch Hill, RI.

iii. United States Coast Guard Regulations

The United States Coast Guard (USCG) enforces regulations for the use of emergency control systems for tank barges on certain waterways. The USCG applies these regulations to Long Island Sound, among other water bodies, and in its regulations it defines Long Island Sound to be bounded on the eastern end by the Present Base Line. 33 U.S.C. § 155.230(a)(3) (definition of Long Island Sound). *See* CT AG Letter (citing 33 U.S.C. § 155.230(a)(3)).

This USCG definition of Long Island Sound is not determinative of how “Long Island Sound” must be interpreted for the purposes of MPRSA § 106(f), but it does represent another established boundary line for Long Island Sound that has undergone public review. This boundary line tends to support use of the Present Base Line, and to cut against using the Old Base Line. It cuts even more strongly against using the Spicer Line, which lies even farther west from the Present Base Line.

f. Other Relevant Court Decisions

i. *Natural Resources Defense Council, Inc. v. Callaway*

Natural Resources Defense Council, Inc., v. Callaway, 524 F.2d 79 (2nd Cir. 1975), pre-dates the Ambro Amendment and involved a controversy over the disposal of dredged material at a site in waters off the coast of New London, CT, and northwest of Fishers Island, that became known as the New London Disposal Site (“NLDS”). (*See* Figure 1.) Two things should be noted about *Callaway*.

First, the Second Circuit’s decision begins by stating that the NLDS is located “in Long Island Sound.” *See* 524 F.2d at 81-81, n. 1. *Accord* *Natural Resources Defense Council, Inc., v. Callaway*, 389 F.Supp. 1263, 1267 (D.Conn. 1974) (lower court decision). This cuts against the Spicer Line, which it appears would place the NLDS outside the Sound. Second, the court’s decision addressed whether under the pre-Ambro Amendment statute, the MPRSA requirements applied at the NLDS. The court noted that the Federal Government argued that the MPRSA requirements were “not directly applicable to this dumping ground [(i.e., the NLDS)] in inland waters.” 524 F.2d at 84.¹¹ The court went on, however, to hold that because the Corps had relied on the MPRSA criteria in

¹¹ The court also noted that, “(Long Island Sound has been deemed by the government to be inland waters [-- meaning waters landward of the base line --] both in nautical charts and under a definition [of “ocean waters”] found in § 3(b) of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532, 86 Stat. 1052).”

selecting the NLDS, it “cannot now be heard to say that those standards are irrelevant to its issuance of the permit for this dumping project.” *Id.* at 85. Although the court decided to apply the MPRSA criteria in *Callaway* in light of the Corps’ prior reliance on them in that case, many practitioners in the field understood the Ambro Amendment to have been an effort to ensure that the MPRSA criteria would continue to be applied to future dredged material disposal projects in Long Island Sound by foreclosing the legal argument made, albeit unsuccessfully, by the Corps in *Callaway*. If this is correct, it would cut against the Spicer Line which would exclude the NLDS from coverage under MPRSA § 106(f).

ii. *Huntington v. Marsh*

Further litigation concerning dredged material disposal in Long Island Sound led to the Second Circuit’s decision in *Huntington v. Marsh*, 884 F.2d 648 (2nd Cir. 1989). This post-Ambro Amendment decision does not discuss the eastern boundary of the Sound, as it involved a controversy regarding the selection of a disposal site in the western portion of the Sound. Nevertheless, the court decision mentions the *Callaway* decision and refers to the NLDS as disposal site *in the Sound*. 884 F.2d at 653 (referring to dumping “at a dumpsite off New London, Connecticut in the Sound”). Once again, this suggests that the NLDS should be regarded to lie within Long Island Sound, and suggests that the Spicer Line, which would exclude the NLDS, should not be considered the eastern boundary of the Sound.

g. Other Considerations

Another potentially important consideration in identifying an eastern boundary of Long Island Sound under MPRSA § 106(f) is that it be a relatively easily recognized line that will be functional for the relevant legal jurisdictional purposes. Using either the Old Base Line or the Present Base Line would satisfy this goal, whereas the Spicer Line arguably would not. Both the Old Base Line and the Present Base Line are well-recognized, easily identified, straight-line boundaries. Conversely, there is no precedent for using the Spicer Line for any jurisdictional purpose and, as such, it is not well-recognized. Moreover, the Spicer Line heads northeast from Orient Point but then turns sharply north at Little Gull Island as it heads to the Connecticut shoreline. This type of line would arguably be somewhat harder to work with than a straight line.

In addition, Mr. Spicer’s letter discusses the geomorphology of Long Island Sound, but the Spicer Line seems to be drawn in a manner inconsistent with that discussion. To the extent that this geomorphology is pertinent to defining the Sound’s eastern boundary for the purpose of MPRSA § 106(f), it suggests that the

Old Base Line should provide that boundary. The Old Base Line tracks across the prominent remaining surface features of a historical moraine running from Orient Point on the North Fork of Long Island, to Plum Island, the Gull Islands and Fishers Island, and then over to the mainland at Napatree Point.¹² This line is consistent with the description in Mr. Spicer's letter of a moraine that once existed in the area before being breached and scoured out in the area of the Race. Thus, Mr. Spicer's letter (at p. 1) states as follows:

During the ice age a glacial moraine was formed south of what is now mainland Connecticut. In those prehistoric days the moraine was a dam from approximately what is now New York City along the north fork of Long Island through Fishers Island to Westerly, Rhode Island. This moraine dammed water and formed a very large lake. Eventually the waters of that lake together with the rising level of the Atlantic Ocean due to the melting of the glaciers succeeded in breaching the low point of the moraine at what is now called THE RACE connecting the lake with the ocean. This erosion of the moraine and the rise of the sea level due to glacial melt continued for thousands of years.

Assuming this to be a roughly accurate description of the area's geomorphology, it supports using the Old Base Line, not the Spicer Line. These factors provide no justification for the Spicer Line's northward turn at Little Gull Island. In addition, while this aspect of the area's geomorphology tends to support considering the water west of the Old Base Line as a separate unit from the water east of that line (*i.e.*, as Long Island Sound and Block Island Sound, respectively) for hydrogeologic purposes, these factors need not necessarily be controlling of how to label the waters for the purposes of MPRSA § 106(f). In other words, while these geomorphological considerations are consistent with using the Old Base Line as the eastern boundary of Long Island Sound, they do not preclude EPA from considering in the future whether other factors, including the Supreme Court's decision in *U.S. v. Maine*, might support reinterpreting the eastern boundary of Long Island Sound under MPRSA § 106(f) to be consistent with the Present Base Line.

¹² See USGS OFR 02-002 Summary Report - Block Island Sound.mht; USGS OFR 02-002 Summary Report - Eastern Long Island Sound Island Sound.mht. See also <http://woodshole.er.usgs.gov/operations/modeling/movies/mpeg/lis.mpg>.

V. Conclusions

On the basis of the above review, EPA concludes that the eastern boundary of Long Island Sound for the purposes of MPRSA § 106(f) is currently represented by the Old Base Line. This is the boundary that EPA has used in the past and it continues to represent a reasonable boundary. As discussed above, there are a number of reasons for this conclusion, including the following:

- 1) The Old Base Line tracks the base line (for the purpose of measuring the territorial sea) that was in place in 1980. As a result, it is likely the eastern boundary of the Sound that Congress contemplated when it enacted MPRSA § 106(f).
- 2) The Old Base Line is the eastern boundary of Long Island Sound that the United States actually used in the 2002 Fishers Island Settlement Agreement, which resolved a case that dealt directly with the application of MPRSA § 106(f). (Of course, as noted above, the text of the Settlement Agreement suggests that its drafters were unaware that the Supreme Court's 1985 decision in *United States v. Maine*, which dealt with federal/state jurisdictional boundaries rather than MPRSA § 106(f), had replaced the Old Base Line with the Present Base Line.)
- 3) The Old Base Line is the eastern boundary of Long Island Sound that the Federal Government referred to in *United States v. Maine*. While this case did not involve the MPRSA, the United States did expressly indicate the view that the Old Base Line constituted the Sound's eastern boundary. Moreover, dicta in the Supreme Court's decision in *United States v. Maine* suggests that the Court accepted the United States' definition of Long Island Sound.
- 4) Using the Old Base Line would delineate Long Island Sound in a manner consistent with the dictionary definition of a "sound," albeit taking into account only Long Island's North Fork and arguably ignoring the waters lying between the South Fork of Long Island and the Connecticut mainland.
- 5) Using the Old Base Line would provide a functional, straight-line, easily recognized boundary that would facilitate implementation of the statute.
- 6) With the Old Base Line constituting its eastern boundary, Long Island Sound would encompass the New London Disposal Site, which would be consistent with federal court decisions stating that the disposal site lies within the Sound.
- 7) Using the Old Base Line as the Sound's eastern boundary would be consistent with the area's geomorphology (i.e., it would track the historical moraine).

EPA believes there are two main detriments to using the Old Base Line as the eastern boundary of the Sound for the purpose of MPRSA § 106(f). First, it creates a patchwork of on-again/off-again MPRSA jurisdiction, given that the Supreme Court moved the jurisdictional base line eastward in *United States' v*

Maine. This creates a potentially confusing regulatory regime that Congress might not have intended. Second, using the Old Base Line excludes from Long Island Sound the waters lying between the South Fork and the mainland, seemingly contrary to the dictionary definition of a sound.

Having identified and explained our present conclusion, EPA underscores that Congress did not precisely define the boundaries of Long Island Sound under MPRSA § 106(f). Thus, Congress left it to EPA to fill that legislative “gap” by reasonably delineating such boundaries. In light of this, and the analysis presented above, EPA believes that the Old Base Line currently provides a reasonable eastern boundary of the Sound, but that it might also be reasonable for the Agency to consider reinterpreting the Sound’s eastern boundary for the purposes of MPRSA § 106(f) to track the Present Base Line.

- 1) The Present Base Line would also provide a well-recognized, straight-line boundary, and would avoid an on-again/off-again regime for MPRSA jurisdiction.
- 2) This line would be consistent with Congressional intent *if* Congress had simply wanted the MPRSA to apply to *all* coastal waters on both sides of the base line in the area of Long Island Sound, wherever the base line was located.
- 3) Using the Present Base Line would also be consistent with the dictionary definition of a “sound,” taking the South Fork of Long Island into account.
- 4) Moreover, using the Present Base Line would make the definition of the Sound under MPRSA § 106(f) consistent with the definition used by the USCG in 33 C.F.R. § 155.230(b).

A detriment to using the Present Base Line as the eastern boundary of Long Island Sound for purposes of MPRSA § 106(f) is that it would mean a change to past definitions of the Sound used by the Federal Government. Such a change, however, might be reasonable in light of the change in the location of the base line as a result of *United States v. Maine*. Another detriment to making this change is that it might raise conflicts with past understandings of the boundaries of Long Island Sound and Block Island Sound in other contexts.

Finally, EPA concludes that the Spicer Line should not be used as the eastern boundary of the Sound under MPRSA § 106(f). As discussed above, there are a number of significant problems with the Spicer Line.

- 1) The Spicer Line would likely be inconsistent with Congressional intent at the time of the enactment of the Ambro Amendment.
- 2) The Spicer Line would exclude the New London Disposal Site from the Sound, which would be inconsistent with the federal court cases cited above.

- 3) The Spicer Line would define the Sound in a manner inconsistent with the definition used by the United States, and accepted by the Supreme Court, in *United States v. Maine*.
- 4) The Spicer Line would define the Sound in a manner inconsistent with the definition of the Sound used by EPA in the 2002 Fishers Island Settlement Agreement.
- 5) The Spicer Line would result in a patchwork of on-again/off-again MPRSA jurisdiction that would seem illogical and might make the statute more difficult to implement.
- 6) The Spicer Line does not provide a well-recognized, straight line boundary, which would also make the statute more difficult to implement.
- 7) The Spicer Line also does not track the historical moraine that Mr. Spicer's letter claims is relevant for defining the Sound.

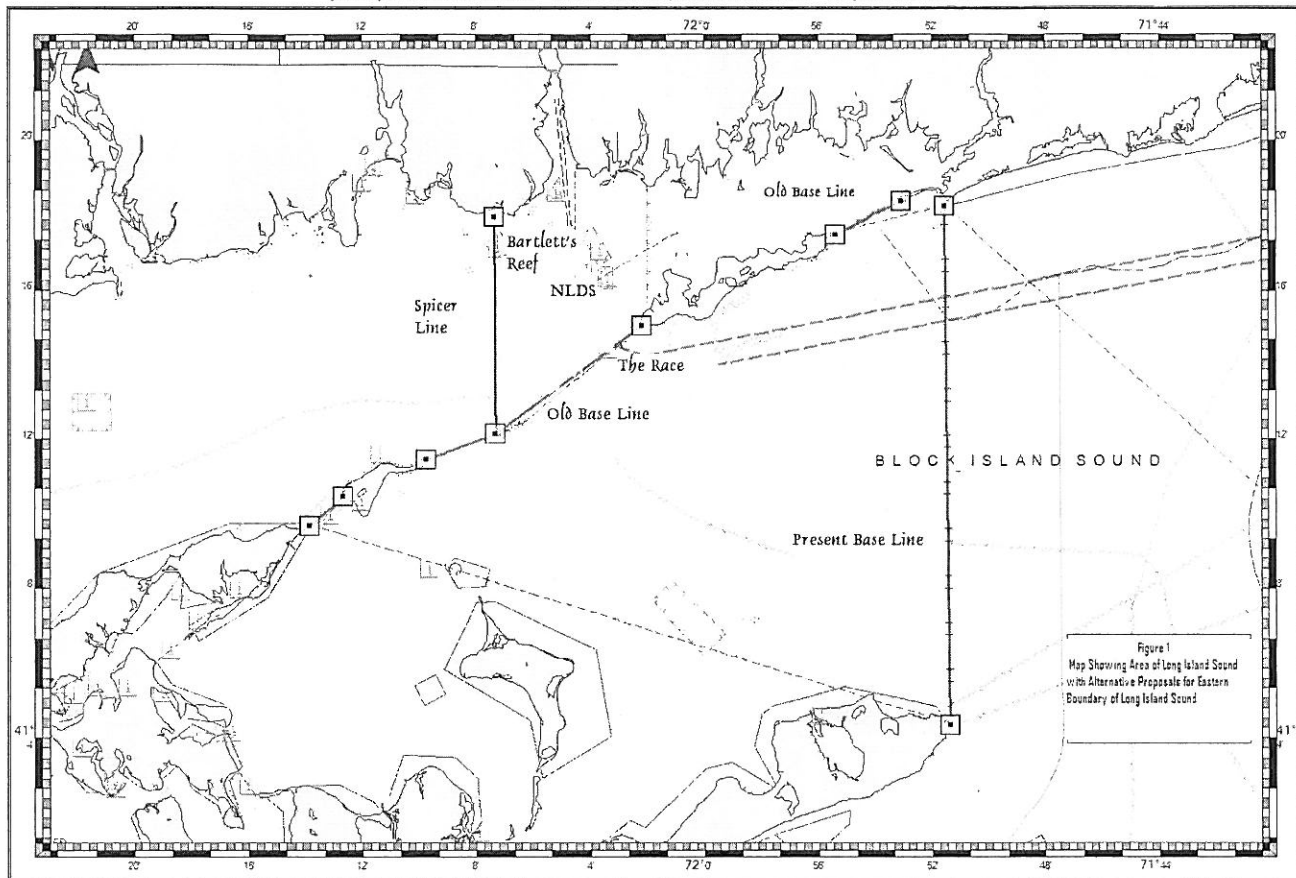
Please free to contact Mark Stein at 617-918-1077 if you have any questions or wish to discuss this matter further.

Figure 1. Map Showing Area of Long Island Sound with Alternative Proposals for Eastern Boundary of Long Island Sound

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Visual Navigation Suite 8.1.2000

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Page 1

ATLANTIC COAST, CAPE SABLE TO CAPE HATTERAS. - 1 : 810,000
(Passport World Charts - vector format) Chart #U13003 - Depth Units: Feet



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Office of The Attorney General
State of Connecticut

December 16, 2008

Joseph Riccio, Vice-Chairman
Connecticut Maritime Commission
Department of Transportation
2800 Berlin Turnpike
Newington, CT 06131

Dear Mr. Riccio:

This is in response to your request for a legal determination of the boundaries of Long Island Sound. Specifically, you are interested in whether the New London dredge disposal site is in Long Island Sound and thus subject to the restrictions of the Ambro Amendment to the Marine Protection, Research and Sanctuary Act of 1972 (MPRSA), codified as 33 U.S.C. § 1416(f).

As you indicate in your letter, there is some difficulty in determining the precise delineation of the eastern boundary of Long Island Sound and, accordingly, the western boundaries of Block Island Sound and Fisher's Island Sound. See *Warner V. Dunlap*, 532 F.2d. 767, 769 (1st Cir. 1976) ("The exact boundaries of Block Island Sound are uncertain").

In *United States v. Marine*, 469 U.S. 504 (1985), the U.S. Supreme Court determined that Long Island Sound is a historic bay under Article 7(6) of the Convention on the Territorial Sea and Contiguous Zone and accepted the Special Master's designation of the eastern boundary line for that purpose. In making his finding, the Special Master determined that Long Island Sound was "closed by baselines across the Race entrance at the eastern end of Long Island Sound, from Orient Point on Long Island to Plum Island, from Plum Island to Race Point on Fischer's Island, and from Fischer's Island to Napatree Point, Rhode Island. Report of the Special Master, United States Supreme Court, October Term, 1983, No. 35, Original, pg. 7 (copy attached).


In establishing oil or hazardous material pollution prevention regulations for vessels, the Coast Guard has defined Long Island Sound for the purpose of the regulations as "waters between the baseline of the territorial sea on the eastern end (from Watch Hill Point, Rhode Island, to Montauk Point, Long Island) and a line drawn north and south from Premium Point, New York [about 40 degrees] 54.5' N, 73[degrees] 45.5'W), to Hewlett Point, Long Island (about 40 [degrees] 50.5' N, 73 [degrees] 45.3 W), on the western end." 33 C.F.R. 155.230(a)(3).

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December 16, 2008
Joseph Riccio, Vice Chairman
Page 2

Since there is no universally established boundary line, we can offer no legal opinion on whether the New London dredge site falls under the MPRSA. We note that any disposal of dredging materials in that site will require application to the appropriate federal and state authorities, who will make their determination of the relevance of federal or state law, including MPRSA.

Very truly yours,


RICHARD BLUMENTHAL
ATTORNEY GENERAL



STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

CONNECTICUT MARITIME COMMISSION

2800 Berlin Turnpike Newington, CT 06131
(860) 594-2550



February 13, 2008

The Honorable Richard Blumenthal
Attorney General of Connecticut
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

Dear Mr. Attorney General:

As Chairman, I have been asked by the Connecticut Maritime Commission to request your assistance in determining the legal boundaries of the Long Island Sound. At issue is the extent that the Ambro Amendment to the Marine Protection, Research and Sanctuary Act of 1972 (MPRSA) [Public Law 92-532; October 23, 1972] affects the New London disposal site. The determination might seem to be a geological issue. However, a legal determination of the physical bounds of Long Island Sound, thus the applicability of the Ambro Amendment, could have a significant impact on the State's economic development related to the cost of dredging and keeping our ports viable.

As you may be aware, the objective of MPRSA is to prevent or strictly limit the disposal into ocean waters of any material that would adversely affect human health, welfare, or amenities; or the marine environment, ecological systems, or economic potentialities. The Ambro Amendment requires all Federal projects of any size and non-Federal projects disposing over 25,000 cubic yards of sediment in Long Island Sound to meet the requirements of MPRSA.

The amendment to the MPRSA known as the Ambro Amendment [33 USC Sec 1416 (f)] was passed in 1980, amended in 1990, and stated in part:

(f) Dumping of dredged material in Long Island Sound from any Federal, etc., project
In addition to other provisions of law and notwithstanding the specific exclusion relating to dredged material in the first sentence in section 1412 (a) of this title, the dumping of dredged material in Long Island Sound from any Federal Project (or pursuant to Federal authorization) or from a dredging project by a non-Federal applicant exceeding 25,000 cubic yards shall comply with the requirements of this subchapter.

The New London disposal site was not originally designated as part of the Long Island Sound Site Designation Final Rule published in June, 2005, and will be required to close in 2011 unless designated pursuant to the requirements of MPRSA. The Final Rule also requires the development and adoption of a Long Island Sound Dredged Material Management Plan (LIS DMMP). An argument has been placed before the Maritime Commission that, geologically, the

Attorney General Blumenthal

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February 13, 2008

New London disposal site is not part of Long Island Sound; thus, should not be considered in the development of the LIS DMMP. Arguably, if the location of the New London disposal site is determined not to be a part of Long Island Sound, then the restrictions of the Ambro Amendment to the MRSPA might not apply.

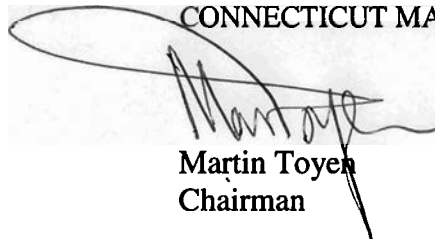
As we researched the eastern boundaries of Long Island Sound, we found maps marked in such a manner that it was very difficult to determine the easterly boundary where Long Island Sound meets Fisher's Island Sound.

Therefore, on behalf of the Connecticut Maritime Commission, I request a legal determination of the eastern boundary of the Long Island Sound. Of particular interest is whether or not the waters northeast of a line between Bartlett Reef Light and the Race Rock Light into and including Fishers Island Sound are part of Long Island Sound; particularly as applied by the Ambro Amendment to the MPRSA.

In addition to this letter, the Commission sought your assistance on a dredging-related issue. In a letter dated November 8, 2006, the Commission asked for an interpretation of Connecticut and New York's rights relative to a change in language to the New York Coastal Management Program. We are wondering about the status of that request, and have enclosed a copy of our letter for your convenience and consideration.

If you need any additional information to facilitate your determination, please do not hesitate to contact me at (860) 767-9061 or martin.toyen@rolls-royce.com. Thank-you for your assistance.

Very truly yours,
CONNECTICUT MARITIME COMMISSION



Martin Toyen
Chairman

MT:cs

Enclosure: CTMC Letter of 8 Nov 2006



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

February 8, 2008

District Engineer

Ms. Brittny Quinn
58 Locust Avenue
Glen Head, New York 11545

Dear Ms. Quinn:

Lieutenant Commander Oditt of the U.S. Coast Guard has forwarded me your letter of November 14, 2007 and his response dated December 11, 2007 regarding Long Island Sound dredging and dredged material management. I am pleased to provide information on our ongoing efforts that are being coordinated in conjunction with our New England District.

At the request of the States of New York and Connecticut, an Interagency Team comprised of Federal and State agencies has been established to formulate a Dredged Material Management Plan for Long Island Sound. Team members include representatives from the Corps of Engineers, Environmental Protection Agency, National Oceanic and Atmospheric Administration Office of Ocean and Coastal Resource Management, New York State Department of State, New York State Department of Environmental Conservation, Connecticut Department of Environmental Protection, Connecticut Department of Transportation and Rhode Island Coastal Resources Management Council. Together, it is our goal to develop a comprehensive plan for safe, environmentally protective and economically efficient management of dredged material that is anticipated to be dredged from Long Island Sound harbors over the next twenty years. The Long Island Sound Dredged Material Management Plan (LIS-DMMP) will serve as the framework for the Corps of Engineers and all other users (Federal, State and local municipalities and the general public) to identify and implement dredged material management alternatives. The DMMP will be developed through a broad-based public process using the best scientific data available.

Recently, the Interagency Team began the LIS-DMMP process by holding a series of Public Scoping Meetings in New York and Connecticut. Over 2500 mailings were sent out to residents of both states informing them of the Scoping Meetings. A web page has been developed where all of the information, including press releases, public scoping information, presentations, etc., relating to the LIS-DMMP Project are accessible. You can access this website at:

<http://www.nae.usace.army.mil/projects/ri/LISDMMP/LISDMMP.htm>

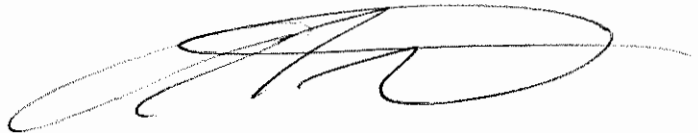
You can also contact the LIS-DMMP project delivery team by email at:

LISDMMP@usace.army.mil

The health and viability of Long Island Sound, and all waterways, is vital to our Nation's protection, economy, environment and culture. The LIS-DMMP team is committed to developing a plan of action to address Long Island Sound dredging issues that incorporates cutting edge technologies with economically justifiable and environmentally sustainable alternatives. We hope you will become a participant in the public outreach opportunities that will be available as the process moves forward.

If you have any questions, please do not hesitate to contact me at (917) 790- 8000 or my staff representative, Mr. Leonard Houston, Chief, Environmental Analysis Branch, at (917) 790-8702.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Tortora', with a large, sweeping loop at the end.

Aniello L. Tortora
Colonel, U.S. Army
District Commander



DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

16 January 2008

Programs/Project Management Division
Programs & Civil Project Management Branch

Mr. Jeffrey Fowley
US Environmental Protection Agency, Region 1
1 Congress Street, Suite 1100
Boston, MA 02114-2023

Dear Mr. Fowley,

The U.S. Army Corps of Engineers in conjunction with the U.S. Environmental Protection Agency (USEPA) recently held a series of Public Scoping Meetings in Connecticut and New York associated with the Long Island Sound Dredged Material Management Plan and the Programmatic Environmental Impact Statement being prepared as part of that project. The period in which the public could provide additional comments for the official Scoping Meeting was held open for 30 days after the completion of the final scoping meeting.

In response to those meetings we received the attached package from William Spicer of Spicer's Marinas in Noank, CT. In his submittal Mr. Spicer has presented a case that the "Ambro Amendment" to the Marine Protection Research and Sanctuary Act (MPRSA), 33 U.S.C. § 1416(f), does not apply to the waters of Block Island Sound, Fishers Island Sound and other water bodies east of the "Race."

In light of USEPA's primary role in implementing MPRSA, we are submitting Mr. Spicer's package to you for your agency's review and opinion on his theory regarding the applicability of the Ambro Amendment to waters east of the Race in Long Island Sound.

If you have any questions please contact me at 978-318-8087 or by email at Michael.f.keegan@usace.army.mil

Sincerely,

Michael F. Keegan, PE.; L.C.S.
Project Manager

Enclosure

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
U.S. Coast Guard
Sector Long Island Sound

120 Woodward Ave
New Haven, CT 06512
Staff Symbol:
Phone: 203-468-4420
Fax: 203-468-4423
Email: stephanie.m.pitts@uscg.mil

16455/P014-08

U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza, Room 2109
New York, NY 10278-0090

Dear Colonel Trotolla:

My office recently received a letter from Ms. Brittney Quinn of Glen Head, NY dated 14 November, 2007 concerning the condition of Long Island Sound. The specific concerns brought up by Ms. Quinn were regarding dredging operations and dumping of sewage in Long Island Sound. Since her concerns were not within the U.S. Coast Guard's jurisdiction, we indicated to her in a letter that we would notify the proper agencies.

Enclosed are a copy of Ms. Quinn's letter and a copy of the reply letter from my office. If you have any questions about this, please contact ENS Stephanie M. Pitts of my staff at 203-468-4420.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Oditt".

KEVIN D. ODITT
Lieutenant Commander, U.S. Coast Guard
Chief, Prevention Department
By direction

Enclosures: (1) Letter from Ms. Quinn dated 14 November 2007
(2) Letter from USCG to Ms. Quinn dated 11 December 2007

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
U.S. Coast Guard
Sector Long Island Sound

120 Woodward Ave
New Haven, CT 06512
Staff Symbol:
Phone: 203-468-4420
Fax: 203-468-4423
Email: stephanie.m.pitts@uscg.mil

16455/P012-08
December 11, 2007

Ms. Brittny Quinn
58 Locust Avenue
Glen Head, NY 11545

Dear Ms. Quinn:

Thank you for your letter dated November 14, 2007 regarding pollution in Long Island Sound. The Coast Guard appreciates your concern and support of this vital U.S. waterway.

As you mentioned in your letter, many agencies are charged with the care of Long Island Sound. The Army Corp of Engineers and the states of New York and Connecticut have departments that focus solely on ensuring the quality of all dredging projects and programs that occur within their jurisdiction. The oversight of marinas is the responsibility of the state. Both the state of Connecticut and the state of New York have programs in place to educate boaters on using proper pump out facilities. Both states also have initiatives to ensure marinas have pump out facilities available. The Army Corp of Engineers has the responsibility of ensuring that all dredging operations and dumping are carried out in accordance with state and federal laws.

While the Coast Guard partners closely with these federal and state agencies to ensure the continued health and safety of Long Island Sound, the Coast Guard does not have the authority to oversee these agencies as they carry out their duties. My office will forward a copy of your letter to both the Army Corp of Engineers and the state of New York Department of Environmental Conservation, who have charge of the responsibilities you mention in your letter.

Again, the Coast Guard thanks you for your continued support. If you require any additional information please contact ENS Stephanie M. Pitts of my staff at (203) 468-4420.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Oditt".

KEVIN D. ODITT
Lieutenant Commander, U.S. Coast Guard
Chief, Prevention Department

14 November 2007

Commanding Officer
U.S. Coast Guard Sector Long Island Sound
120 Woodward Avenue
New Haven, Connecticut 06512

Re: Pollution in the Long Island Sound

Dear Commanding Officer,

As you know, the Long Island Sound is the home to eight million people, brushing 300 miles of shorelines. Not only is it home to many people in the surrounding communities but it is also a habitat to many. The Sound also contributes an average \$5.5 billion annually because of the recreational end of it. Unfortunately, today, we are faced with many industries lining the Sound and dumping waste into the dumpsites that the EPA has already created in the Sound. If we are trying to prevent the sound from pollution than why are we currently still dumping in the Sound? I am writing you this letter because I believe that you, as Commanding Officer should keep a close eye on what is coming in and out of the Sound as well as what is being put into the Sound. I know this is affecting you and your family as much as it is mine.

Growing up, I lived very close to Tappen Beach in the Town of Oyster Bay, which is located on the Long Island Sound. I may have played in the water only a dozen times, more regularly playing on the playground or in the public pool. Although I was not aware of water pollution nor did I care at such a young age. it was never an upset that I did not get to go for a swim. Today, it is unfortunate to say that I have no desire to be near the dark brown muck-like water. I read a letter written to the New York Times published back in 1987, which was a response to an article in the New York Times that had been published a month earlier. A family wrote about their boat trip traveling through the sound, the letter states, "we were shocked to learn that the marinas don't provide facilities for dumping sewage from boat holding tanks or portable toilets." Although this is from 1987 this still comes as a shock to me and it has led us to the consequence of pollution in the Long Island Sound today. Is it a financial issue that marinas choose to not install the proper equipment necessary for draining boats waste? It seems as though solutions that have been made are any solving the problem at hand and hurting us in the future. For example the dumpsites in the Sound, the EPA needed some place to dump dredge, but what did they plan on doing when they were full? Create more dumpsites? In 2004, the Town of Huntington fought the federal governments plan on dumping millions of cubic yards of dredge spoils into the Sound, just off the shores of Lloyd Harbor. This incident also took place in Connecticut. The idea of dumping into the Sound makes the authorities that are trying to help the Long Island Sound look hypocritical. I believe this is because they are continuing to harm the Sound when at the same time fighting to preserve it. I think the Coast Guards of the Long Island Sound should be closely monitoring the dumping sites and what is going into them.

A-3-140 **ENCLOSURE** |

Thankfully, an agreement made in 2005 between Governor Pataki from New York, Governor Jodi Rell from Connecticut and the Army Corps of Engineers can hopefully be of some help. The agreement stated that the two current dumpsites in the Long Island Sound would only be able to be used for the next three years. The agreement also stated that a Regional Dredging team would need to be assembled to create alternate solutions for where dredged material could go. New York has spent approximately \$400 million dollars to clean up and restore the Long Island Sound and this agreement was a good start. Many government activists have put forth their time and effort to help preserve the Sound. More recently, Steve Israel, the Councilman in Huntington is continuing in the fight for a \$9.5 million increase in the funding to help protect the Sound. Although the efforts being put forth can only do so much, if we want to preserve the Sound for the future we need to take action now. I think Marina's should be watched by higher authorities like the Coast Guard to make sure they are abiding by the rules they need to.

One of the most important points that must be made is that the communities need to be aware of the problem. People need to know what they can do to help preserve the Sound. In a survey given to 1200 residents that live within 15 miles of the shoreline, many were not aware of the problem. The survey also revealed that a high percentage of residents would not consider the water quality to be good or excellent, that swimming is not safe nor is eating fish from the Sound. It is unfortunate to think that many residents do not appreciate the Sound past the shoreline. Many of the Sound's public beaches are known only for the Public pool, the playground and the park. If residents were more aware of the problem, they could do many simple things that would help. I am aware of the many programs the EPA has put together in efforts to get schools involved and present students, teachers and parents with the problem occurring in the Sound. Personally, I think that this is a great way to get communities to see what is really going on and also to give a hand to preserve the Sound. Honestly, is the Sound somewhere you would take the family for a swim?

I think one of the main issues that should be focused on is monitoring what is going on in the Sound. Authorities need to keep a closer look at boats traveling through the Sound, and Marinas need to make sure their standards are held high. The federal Environmental Protection Agency manager for water quality said "For over 100 years the Sound has been used to dump dredged materials." He mentioned that the reason for dumping in the Long Island Sound in the first place is because it is the only inland waterway that has been protected by the federal Ocean Dumping Act. They allegedly tell us that they set very high standards for what is being dumped in the water. Could these "safe" dredge materials that have been dumped in the Sound for so many years have affects on our health? Once, such a great day at the beach for families or a great fishing spot, it is no longer a guaranteed safe thing to do. We are being warned that the fish can have chemicals such as mercury that would be hazardous to your health.

Long Island is my home and I'm faced with the Sound being destroyed everyday. I know as a child, the waters were fairly safe, and we did not face the issues that we do today. It saddens me to think that many beaches along the Sound are no longer safe for swimming and recreation today due to the pollution in the Sound. I strongly believe that if we can keep a closer eye on the two dumpsites already in the Sound while thinking about alternate options for dumping dredged materials this will benefit us in the future. The continuous watch of the Marina's standards will also be important. I hope for the future that maybe someday my children can swim in the Sound like I once did and I believe you would want the same for your family.

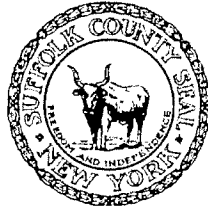
Thank you,

Brittney Quinn

Brittney Quinn

58 LOCUST AVENUE
GREEN HEAD, NY 11945

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

CARRIE MEEK GALLAGHER
COMMISSIONER

DEPARTMENT OF ENVIRONMENT
AND ENERGY

Jean Brochi
USEPA, New England Region
One Congress Street, Suite 1100 CWQ
Boston, Ma 02114-2023

RE: Notice of Intent (NOI) to prepare a Programmatic Environmental Impact
Statement (PEIS) for the Long Island Sound Dredged Material Management Plan
(LIS DMMP)

Scoping Meeting: November 27, 2007

Dear Ms. Brochi:

Comments for the record:

Suffolk County welcomes the exploration of the environmental impacts of the various alternatives for the disposal of dredge spoil identified in the LIS DMMP during the preparation of the proposed PEIS. The County continues to advocate the review of alternative methods of dredge spoil disposal that do not include the designation and authorization of long-term, open water, disposal sites in Long Island Sound. Suffolk County is also committed to the eventual elimination of open water disposal sites in Long Island Sound in order to protect the water quality of Long Island Sound.

Some previously identified alternatives to open water disposal sites in Long Island Sound we would like to see further explored are:

- (a) Upland disposal
- (b) Disposal beyond the continental shelf
- (c) Disposal in open and/or closed landfills
- (d) Beneficial re-use including:
 - (i) Asphalt, cement and other aggregate uses (roadway sub bases)
 - (ii) Brownfield remediation
 - (iii) Use at closed mines and quarries
 - (iv) Agricultural use
 - (v) Beach placement (sand replacement)

As outlined in the May 27, 2004 letter from County Executive Steve Levy to Jean Brochi of USEPA Region I, regarding the FEIS, Suffolk County remains extremely concerned by the potential long and short term impacts to Long Island Sound by the projected deposition of millions of cubic yards of dredge spoils into Long Island Sound. These concerns remain as valid today as they were during 2004 and a summary of the concerns are as follows:

Natural Estuary Designation:

The Long Island Sound was designated an "Estuary of National Significance" under the USEPA funded National Estuary Program (NEP) in 1987. The NEP seeks to protect nationally significant estuaries from pollution, development, and overuse. Currently, there are no long-term dredge material disposal sites designated by USEPA in Long Island Sound. The U.S. Army corps of Engineers (USACE) short-term authority for the Central Long Island Sound site expired in February 2004, and the Western Long Island Sound site will close within two (2) years. There does not appear to be an environmentally substantive reason to create long-term disposal sites in the Long Island Sound where none exist today.

Economic Impact:

The Long Island Sound Study estimates the value of the Sound to the local economy to be \$5.5 billion annually. Designating long-term dredge material disposal sites in the Sound instead of allowing the short-term authority of USACE to expire has the potential to jeopardize this economic engine for the region.

Impact on Dissolved Oxygen:

Long Island Sound is severely impacted by low dissolved oxygen levels, a fact acknowledged by the USEPA (FEIS page 4-57), "Hypoxia, or low DO concentrations, has been identified as the most pressing priority problem in Long Island Sound". "The introduction of nutrients or organic material to the water column as a result of the discharge can lead to a high biochemical oxygen demand (BOD), which in turn can lead to reduced dissolved oxygen, thereby potentially affecting the survival of many aquatic organisms."

The FEIS cites (page 5-4) that "...dredged material disposal may include the release of nutrients or contaminants from sediments during the descent phase." It maintains that these impacts are "generally small," however, it continues that a U.S. Army Corp of Engineers study "was unable to describe cumulative effects due to complex and interrelated environmental factors" from dredged material disposal. The lack of essential information is sufficient reason to proceed with caution when considering designation of long-term disposal sites within the Long Island Sound. What is known is that during the summer of 2002 there was a 130 square mile hypoxic zone that persisted for more than 60 days in Long Island Sound.

In 2001, the USEPA approved a 58.5% reduction in the Total Maximum Daily Load for nitrogen into the Long Island Sound. Approval of dredge material disposal sites within the Sound by USEPA directly conflicts with this policy. Furthermore, Suffolk County maintains that for the protection of the Long Island Sound estuary from the cumulative detrimental effects of the continued dumping of dredge spoil, it should be the goal of the USEPA to reduce or eliminate the long-term disposal of dredged material in Long Island Sound. Every level of government on Long Island (village, town, county and state) has recognized the importance of this natural resource and are actively participating in, and funding, activities to improve water quality in the Long Island Sound.

Consisting with Environmental Regulations:

Before even considering disposal sites within the Long Island Sound, both the Clean Water Act (CWA) and the Marine Protection, Research, and Sanctuaries Act (MRPSA) direct USEPA to utilize open ocean sites (beyond the continental shelf) wherever feasible. The MRPSA, [33 U.S.C.S. Section 1412(a)(I)

requires that “in designating recommended sites the Administrator shall utilize wherever feasible locations beyond the edge of the continental shelf.”

The regulations under the Federal Clean Water Act (CWA), Subchapter H – Ocean Dumping, General Criteria for the Selecting of Sites, [40 CFR, Sections 2228.5(a) and (e)], provide that:

- “The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.”
- “USEPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf, and other such sites that have been historically used.”

The USEPA proposal to designate long-term disposal sites within the Long Island Sound estuary appears to contravene these sections of law.

Environmental Consequence:

The FEIS noted that the primary effects of the continued dumping of dredge spoils in Long Island Sound include: physical, chemical, and biological impacts to the water column; burial of native species; bioaccumulation of contaminants; long-term cumulative effect to the benthic community and local food web; reductions in infaunal abundances and species diversity; and long-term impacts to fish and shellfish due to changes in habitat and food resources. These cumulative impacts are likely to occur as a result of multiple disposal events over time at the same designated dumpsites.

The FEIS noted that 90% of the dredge material projected to be dumped in the Sound for the next twenty (20) years will originate from within six (6) Connecticut harbors (Guilford/Branford, New Haven, Housatonic/Milford, Bridgeport, Norwalk and Stamford, FEIS page 2-7). These harbors are identified in the Long Island

Sound Study Comprehensive Conservation and Management Plan (pages 51-52) as containing sediment laced with elevated heavy metals and PCB contamination.

Summary & Conclusions:

In summary, Suffolk County strongly desires that the preparation of the PEIS considers the full costs of the environmental impacts of open water dredge spoil disposal in Long Island Sound. Any degradation of the water quality in Long Island Sound will have serious environmental and economic consequences to the residents of Suffolk County. Suffolk County disagrees with the contention of the previous FEIS that the continuation of open water dredge spoil dumping within the Long Island Sound estuary is without significant or long-term impacts.

Alternatives to open water disposal are becoming more viable due to advances in technology and the County welcomes a thorough examination of the alternatives to open water disposal in the PEIS. If open water disposal is deemed to be the only feasible alternative, the USEPA should instead follow the stated requirements of the Clean Water Act and the Marine Protection, Research and Sanctuaries Act and designate ocean dumping sites beyond the continental shelf. The potential increase in projected dredging costs is insufficient reason to render this alternative impractical or infeasible in view of the Sound's \$5.5 billion annual contribution to the region's economy and the hundreds of millions of dollars being expended by local governments to improve water quality through sewage treatment programs, storm water remediation projects, aquatic habitat restoration efforts, both point and non-point source pollution remediation initiatives and public outreach and education programs.

Sincerely,



Carrie Meek Gallagher

Commissioner, Department of Environment & Energy

CMG/ljt

CLEAN HARBOR ACTION

c/o 916 East Boston Post Road
Mamaroneck, NY 10543-4109
TEL: (914) 698-5678
FAX: (914) 698-7321
E-Mail c/o: dan.n@dsnainc.com

November 26, 2007

RE: Public Hearing – LI Sound Dredged Material Management Plan (LISDMMP)

My name is Daniel S. Natchez and I am the coordinator for CLEAN HARBOR ACTION as well as REVITALIZE OUR WATERWAYS – both educational advocacy groups within the LI Sound watershed. In addition, I am the President of DANIEL S. NATCHEZ and ASSOCIATES Inc., an International Environmental Waterfront Design Consulting Company, and I serve as Vice Chairman of ICOMIA's MARINAS COMMITTEE and am a member of numerous US and international marina industry organizations.

We welcome the effort espoused in the Public Notice put out for this meeting by EPA and the ACE.

There is no question that numerous user as well as environmental groups have been supporting and pushing for the development of a management plan for dredging and relocating sediments from our harbors on a environmentally sustainable, economically affordable and logistically practicable basis for OVER THREE DECADES. The approach to such a plan must be based upon science and practicalities and devoid of the political and emotional rhetoric that has dominated many previous meetings and discussions.

Unfortunately, previous efforts have failed in large part due to differences within and between the states, the numerous federal agencies and other organizations. The overwhelming bureaucracy and fear of doing what is right because it may not be popular (with either a capital or small "P" as in "political") is just no longer acceptable.

The facts are as follows:

Recreational boating is one of the most important economic activities in Long Island Sound – many times more so than the commercial fishing industry. The same is true for the commercial marine industry in LI Sound.

The further fact is that recreational boating, from kayaking to larger boats, is extremely important to the area's character and quality of life.

The LI Sound/New England area has lost over 10 percent of its total number of marinas over the last 5 to 10 years. And the number of disappearing facilities is rising exponentially.

There are numerous reasons for facility closures but one of the more significant is the lack of adequate water depths combined with the cost of testing and being able to dredge and relocate dredged materials on an economically affordable basis.

And if a dredge project needs cap material, which is typical for almost all recreational facility dredge projects, there is virtually no material around, except from large ACE or commercial

project(s) and the logistics of having cap material placed *immediately* upon the relocated material that needs cap is almost impossible due to various associated permit conditions, including the periods of time available for the dredging and the length of time needed to undertake the combined projects.

What we have is a situation which is analogous to when one goes to the dentist and is told the teeth, while not great, are ok, but the gums have to come out.

There are numerous recreational as well as commercial marinas and port facilities that are in desperate need of dredging but, due to the lack of economically and logistically feasible and/or reasonable approaches, no longer have the needed water depths to operate. Many are ceasing their marine dependent businesses and the properties are being turned into upland residential and office developments.

THE FACT IS THERE NEEDS TO BE A MORE HOLISTIC AND MEANINGFUL APPROACH TO DREDGING AS WELL AS RELOCATING THE DREDGED MATERIALS WITHIN LI SOUND or there WILL NO LONGER BE MEANINGFUL ACCESS INTO AND USE OF LI SOUND.

There are many consultants, operators, owners, and environmental groups what would welcome discussions on these issues with the "TEAM" in the hopes of helping to a) set a meaningful agenda to accomplish the published task, and b) work with the team as the process moves forward in reviewing and interacting with the TEAM.

The biggest concern is that the work of the TEAM, as well-meaning as the TEAM may be, will not be as attuned to many issues as it otherwise could be. This was true in the designation process for the relocation sites in LI Sound and it left a major rift and credibility gap. Many from the environmental groups and industry felt that the working mechanism of the designation process was less than effective and it failed to gain their support.

The concept of the agencies setting up their goals and implementation approaches and then coming to the public for input is ludicrous, and is bound to be less effective and probably self destructing. In the designation process, the approach to ascertaining the true needs, what is affordable, and what are reasonable and meaningful alternatives, got lost in the bureaucratic PYA approach that, bluntly stated, was an overwhelming missed opportunity - others might be more colorful.

It is MANDATORY to involve the stakeholders in the process early on and not as a rubber stamp to the approaches that have been agreed upon through the agency committees.

We would be happy to suggest names of those who would be helpful in an initial meeting to discuss this approach. We would envision such groups as the CAC for LI Sound, various environmental groups, marine industry owners/operators and/or groups, and consultants from both NY and CT, to be part of an initial meeting.

There are a couple of fundamental policy decisions that have to be agreed upon:

- a) is recreational and commercial boating important – if so, then
- b) it is mandatory to find economically affordable and environmentally responsible ways to relocate dredged materials.

If there is agreement on these two fundamental planks, then make it happen – do not pay lip service to it.
If not, be honest enough to say so.

Row-cha/2007-11-26 hearing lisdmmp



Statement from Congresswoman

Nita M. Lowey

Serving Westchester and Rockland Counties

Public Meetings Scheduled On Long Island Sound / Dredged Material Management Plan

Statement: U.S. Representative Nita Lowey

November 26, 2007

Those of us who are lucky enough to live near the Long Island Sound can hardly imagine what our lives would be like if we didn't get to experience all that it has to offer. The Sound is really only about 11,000 years old - - born yesterday - - by geologists' standards. We're lucky that so much of its story happened when humans were able to see it.

I have been privileged to represent the Sound Shore area in the Congress for the last 19 years. During that time I have co-chaired the Long Island Sound Caucus and brought more than \$30 million in federal money to environmental improvements on Long Island Sound. While most of the changes in the Sound have been the result of natural processes - - glacial melting, tidal drainage, and rising sea levels - - we know that our own actions have played and continue to play a role as well. That's why protecting and enhancing the Sound has always been one of my highest priorities.

I am pleased that the Army Corps of Engineers in conjunction with the EPA (Regions 1 and 2), New York Department of State, New York Department of Environmental Conservation, Connecticut Department of Environmental Protection, Connecticut Department of Transportation, Rhode Island Coastal Resources Management Council and the National Oceanic and Atmospheric Administration, are working together in the best interests of the Sound.

As a result of rules and regulations set out by the EPA in 2005, dredged material from lakes, harbors, and other areas can be placed in the Sound. In order to protect the Sound, the Army Corps of Engineers is developing the Programmatic Environmental Impact Statement (PEIS) to evaluate the impacts identified in the development of a Dredged Material Management Plan (DMMP). This DMMP is important for

understanding where dredged material that would be generated in the maintenance or the improvement of navigation facilities in Long Island Sound could go, while respecting the environment of the Sound and its tributaries.

All of us here recognize the importance of protecting the Sound. I urge the EPA and the Army Corps of Engineers to consider all options through the DMMP and the PEIS when it comes to the handling of dredged material, including what the material is, what might be in it, and whether alternate sites other than the Sound exist.

At the same time, these agencies must also ensure safe and timely management of the region's dredged material, while meeting the need for safe and economically viable navigation for water-based commerce, transportation, national security, and other public purposes. I hope that in doing so, the DMMP will protect the environmental well-being of the Sound for Sound Shore residents, as well as those communities inland, many of which have tributaries that eventually end up in the Sound.

I will continue to work together with individuals, local organizations, and government at all levels to ensure that the Long Island Sound is protected and local harbors and tributaries receive the proper maintenance.



United States
Environmental Protection Agency
New England



U. S. Army Corps of Engineers
New England District

Public Notice - Long Island Sound Dredged Material Management Plan (LIS DMMP) Meetings

A Notice of Intent (NOI) to prepare a Programmatic Environmental Impact Statement (PEIS) was published in the Federal Register on August 31, 2007 by the Corps of Engineers. The NOI is a formal announcement of the EIS process, which begins with scoping. The EIS will evaluate the overall impacts of alternatives identified in the development of a Dredged Materials Management Plan for dredged material from private projects greater than 25,000 cubic yards and federal projects in Long Island Sound (LIS). The DMMP will be developed by the Corps of Engineers (ACOE) in conjunction with representatives of the following federal and state agencies: EPA Region 1 and 2, NY DOS, NY DEC, CT DEP, CTDOT, RICRMC and NOAA. Each agency will provide members who will be part of the LIS Project Delivery Team (PDT). The PDT is responsible for identifying, evaluating and documenting alternatives that can be used in managing the region's dredged material.

The overall goal of the LIS DMMP is to develop a comprehensive plan for dredged material management in Long Island Sound. The DMMP should lead to a continued reduction of the use of ocean placement sites over time.

The DMMP will be funded and managed by the Corps of Engineers and is tentatively scheduled for completion in 2013. A public involvement strategy has been developed by the PDT. This public involvement plan describes in general the means by which the PDT will involve stakeholders and the public in the DMMP and PEIS process. Stakeholders include Federal, state, county and municipal agencies, tribes, universities, interested non-governmental groups including environmental organizations and marine trades groups, citizens groups and individuals with an interest in Long Island Sound. These organizations and individuals will be notified of public meetings or workshops, as well as periodic progress reports on the development of the EIS and DMMP. Formal scoping meetings, public meetings, and workshops will be scheduled in both Connecticut and New York. The first of such meetings are scheduled during the week of November 26, 2007 as follows:

Monday, November 26

Evening 7 – 10 pm

Location: Empire Ballroom

Address: Radisson New Rochelle

One Radisson Plaza

New Rochelle, NY 10801

Telephone: 914-576-3700

Directions: http://www.chwcms.com/rad/images/hotels/NYROCHEL/NYROCHEL_Directions.pdf

Tuesday, November 27**Afternoon 1 – 4 pm****Location:** Diplomatic Ballroom**Address:** Danfords on the Sound Meeting and Conference Center

25 East Broadway, Port

Jefferson, NY 11777

Telephone: 631-928-5200

Directions: <http://www.danfords.com/Directions/directions.asp>**Tuesday, November 27****Evening 7 – 10 pm****Location:** Long Island Room**Address:** Holiday Inn in Westbury- Long Island

369 Old Country Road

Carle Place, NY 11514

Telephone: 516-997-5000

Directions: <http://www.ichotelsgroup.com/h/d/hi/1/en/hotel/NYCWB/transportation>**Wednesday, November 28****Evening 7 – 10 pm****Location:** The Glen**Address:** Westin Stamford

1 Stamford Pl.

Stamford, Connecticut 06902

Telephone: 203-351-1832

Directions: <http://www.starwoodhotels.com/westin/property/area/directions.html?propertyID=264>**Thursday, November 29****Afternoon 1 – 4 pm****Location:** Morgan Ballroom**Address:** Holiday Inn New London

269 N. Frontage Rd.

New London, CT 06320

Telephone: 860-442-0631

Directions: <http://www.ichotelsgroup.com/h/d/hi/1/en/hotel/GONMS/transportation>**Thursday, November 29****Evening 7 – 10 pm****Location:** Linsly-Chittenden Hall Room 102**Address:** Yale University

63 High Street

New Haven, CT 06511

Telephone: 203-432-0465

Directions: <http://business.yale.edu/map/>**Parking:** <http://www.yale.edu/parkingandtransit/parking/VisitorParking.htm>

For additional information, or to download the meeting presentations, please visit the project's web page at the internet address: <http://www.nae.usace.army.mil>. If you would like to request additional information, please send an email to the project email address: LISDMMP@usace.army.mil.



Ocean and Coastal Consultants
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November 9, 2007

Mr. Joseph Seebode
Chair, Central & Western LIS Regional Dredging Team
New York District, US Army Corps of Engineers
26 Federal Plaza
New York, New York 10278-0090

Dear Mr. Seebode:

Thank you and the integrated LISRDT and LISDMMP PDT for providing our group of consultants the opportunity to discuss the plight of non-Ambro Amendment sized (<25,000 cubic yards) dredging projects located in the central and western regions of Long Island Sound (LIS). The August meeting was of immense value to our group in understanding the situation as perceived by LISRDT and PDT and we hope that they have a better appreciation of the plight of these small dredging projects within the Central and Western portions of LIS. We (James J. Bajek, LLC, Daniel S. Natchez and Associates, John Hilts, and Ocean and Coastal Consultants, Inc) are herein providing you a list of the projects we would like to have considered for the capping program we discussed. The list is not complete; as you know the problems associated with relocating dredged material generated by maintaining existing port and marina facilities face a number of problems including dredger availability and the costs associated with actually implementing the work. As a result of those uncertainties the list of projects offered below is our present day understanding of our client's desires. It does not include all the projects that would benefit from the program, only what the four consultant Companies have in hand and have received a tentative authorization to include at this time.

We continue to believe that a partnership between the US Army Corps of engineers and our clients represents the best option for resolving the dredging impasse and we appreciate any assistance in moving this concept forward.

Very truly yours,

Michael Ludwig
Manager, Regulatory Services

20071029 – Desperate for Cap

James Bajek

1. Norwalk Yacht Club, Wilson Cove, Norwalk (CT Permit Application # 200501532-AT under Notice) 5,800 cy
2. Rowayton Marine Realty, Five Mile River, Norwalk (CT COP-2006029-SJ) 1,675 cy
2. Five Mile River Works, Five Mile River, Norwalk (CT Permit 200300956-JW) 2,250 cy
3. Douglas Campbell, Five Mile River, Darien (CT COP-2004-126-JW) 810 cy
4. SONO Wharf LLC, Norwalk Harbor, Norwalk (CT COP-2004-179-SJ) 3,000 cy
5. Total Marine, Norwalk Harbor, Norwalk (CT COP-2003-127-SJ) approx. 4,000 cy
6. Norwalk Boat Club, Norwalk River, Norwalk (CT COP Application in progress) 3,500 cy
7. Village Harbor Creek Corporation, Long Island Sound, Norwalk (CT COP-2003-111-KB) approx. 20,000 cy
8. Edward & Susan Reilly, Saugatuck River, Westport (CT Permit 200502094-TS) 2,895 cy
9. Town of Greenwich, Grass Island Marina, Greenwich Harbor, Greenwich (CT Permit 200402894-SJ) 20,000 cy
10. Joseph Aquino, dba Wright Island Marina, New Rochelle Harbor, New Rochelle, NY (CT COP-2007-099-SJ) 8,600 cy
11. Greenwich Boat & Yacht Club, Inc., Greenwich Harbor, Greenwich (CT COP-2007-159-KZ) 4,300 cy
12. Riverscape Marina, Mianus River, Greenwich (CT COP Application in progress) 12,340 cy

Subtotal = 91,870 cubic yards

John Hilts

1. Stony Point Association, Burritt's Cove, Saugatuck River (COP-2002-052-KC): 13,650 cy
2. Rex Marine Center 144 Water Street, Norwalk (CT Permit 200303581-JW): 8,300 cy
3. John Illuzzi 468 Sasco Hill Road, Fairfield (CT COP-2005-001-KB): 4,730 cy

Subtotal = 26,680 cubic yards

OCC

1. City of Rye, Municipal Boat Basin, (Permit renewal application in process) 23,000cy
2. Pinengo Neck Homeowners Association, Milton Harbor, Rye, NY 2,200 cy

Daniel S. Natchez and Associates

1. AEMB Holdings LLC, Greenwich harbor, Greenwich, CT (COP-2006-162-TS), approx. 700cy.
2. Post Road Boat Yard, Inc., Mamaroneck Harbor, Mamaroneck, NY (COP-2007-160-TS)
COP is pending and will be issued by the 22nd of November, approx. 6,438 cy

APPROXIMATE TOTAL
155,000 cy

FOR FURTHER INFORMATION CONTACT: Ms. Joan Gilsdorf, Patent Attorney, e-mail: joan.gilsdorf@smdc.army.mil, (256) 955-3213 or Ms. Susan D. McRae, Office of Research and Technology Applications, e-mail: susan.mcrac@smdc.army.mil; (256) 955-1501.

SUPPLEMENTARY INFORMATION: The invention pertains to detecting reflected energy and, more particularly, to radar and ladar systems with enhanced range. A reflected energy detecting device includes a transmitter for transmitting an electromagnetic signal and a receiver for receiving a reflected electromagnetic signal. An antenna connected with the transmitter and the receiver radiates the electromagnetic signal and captures the reflected electromagnetic signal. The antenna may be movable. A main controller controls operation of the transmitter and the receiver and the movement of the antenna. The reflected energy detecting device may further include at least one platform to support a remote reflector that is dimensioned and configured to redirect the transmitted electromagnetic signal in a desired direction, and a platform controller that communicates with the main controller and maintains alignment between the remote reflector and the antenna.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07-4276 Filed 8-30-07; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Draft Environmental Impact Statement for Center Hill Dam and Lake, Changes to Center Hill Lake Elevations, DeKalb County, TN

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The Corps of Engineers, Nashville District, U.S. Fish and Wildlife Service (Cooperating Agency), and the Tennessee Valley Authority (Cooperating Agency) have prepared a Draft Environmental Impact Statement (DEIS). The DEIS is necessary to provide National Environmental Policy Act (NEPA) compliance to address changes that could include, but are not limited to water quality, aquatic, riparian, and terrestrial habitat, recreation, water supply, flood storage, economics, hydropower production, and safety as a result of operating Center Hill Lake

significantly below normal pool elevations for extended periods of time.

DATES: Written comments must be received by the Corps of Engineers on or before October 19, 2007.

ADDRESSES: Written comments on issues to be considered in the DEIS shall be mailed to: Joy Broach or Patty Coffey, Project Planning Branch, Nashville District Corps of Engineers, P.O. Box 1070 (PM-P), Nashville, TN 37202-1070.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the notice, please contact Joy Broach, Environmental Team, (615) 736-7956, or Patty Coffey, Environmental Team, (615) 736-7865.

SUPPLEMENTARY INFORMATION:

1. Center Hill Dam is currently suffering from severe dam seepage problems. A comprehensive plan for repairs has been approved; however, these repairs will take 7-10 years to implement. Until the repairs are sufficiently complete, the Corps has determined that it is in the public's interest to operate Center Hill Lake at lower pool elevations.

2. The U.S. Fish and Wildlife Service is a Cooperating Agency because of the potential to affect listed species. The Tennessee Valley Authority is a Cooperating Agency because of the potential to affect electrical power production.

3. This notice serves to solicit comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received by us will be considered during the preparation of the Final Environmental Impact Statement (FEIS).

4. *Public Meetings:* At present, no public meetings have been scheduled to scope for potential issues to be evaluated in the FEIS. Requests for public meetings should be directed to Mr. William Peoples, Chief, Public Affairs Office, U.S. Army Corps of Engineers, Nashville District, Nashville, TN, 37202-1070. Mr. Peoples may be reached by telephone at (615) 736-7834.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07-4277 Filed 8-30-07; 8:45 am]

BILLING CODE 3710-GF-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement To Analyze a Long Island Sound Dredged Material Management Plan

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Draft Programmatic Environmental Impact Statement (DPEIS) will evaluate the overall impacts of various alternatives identified in a Long Island Sound Dredged Material Management Plan (LIS DMMP) for management of dredged material in the Long Island Sound (LIS) region. The overall goal of the LIS DMMP is to develop a comprehensive plan for dredged material management in Long Island Sound using a broad-based public process that protects the environment based on best scientific data and analysis, while meeting society's need for safe and economically viable navigation for water-based commerce, transportation, national security, and other public purposes. The LIS DMMP will identify potential environmentally acceptable, practicable management plans that can be utilized by the Corps of Engineers (Corps) in maintaining Federal navigation projects, as well as various non-Corps dredging proponents in their analysis of options to manage non-Corps dredging projects. Some alternative disposal methods may be implemented on the basis of the PEIS, while others may require additional analysis at the project level. As specific alternatives are put in place to implement a given management option, more detailed National Environmental Policy Act (NEPA) documents may be prepared by the Corps and other Federal agencies, and such NEPA documents will evaluate specific impacts from implementing a particular management option.

ADDRESSES: U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DPEIS can be answered by: Mr. Mike Keegan, (978) 318-8657, e-mail: Michael.f.keegan@usace.army.mil.

SUPPLEMENTARY INFORMATION: The Governors of Connecticut and New York, in a joint letter dated February 8, 2005, requested the Corps to develop a regional DMMP for the LIS region. In

June 2006, the Corps of Engineers, New England District completed a Preliminary Assessment (PA) to document the need for a comprehensive DMMP for the LIS region. The PA concluded that successful completion of a LIS DMMP is critical to the Corps' ability to maintain the region's civil works navigation projects, and to provide future navigation improvements to the system of Federal waterways in the LIS region. Appropriate future cost-effective management methods and future dredged material capacities must be identified to serve both Federal and non-Federal project needs in this region for the long-term health of the region's economy, including its navigation-dependent industries and activities. The Corps prepares NEPA documents to evaluate the environmental impacts of the actions and alternatives analyzed in dredged material management plans. In preparing the current DPEIS, the Corps expects this document to be used as part of the NEPA analysis for both Corps and non-Corps future dredging projects through tiering and incorporation by reference. Issues to be analyzed in the DPEIS may include potential impacts to: shipping and navigation; commercial and recreational fisheries and shellfisheries; water quality; sediment quality; biological resources, including threatened and endangered species; bioavailability of contaminants; cultural resources; recreational activities such as use of beaches, refuges, and natural areas; wetlands; and other potential habitat restoration opportunities. The DPEIS will be prepared in coordination with other environmental review and consultation requirements under the Clean Water Act, National Historic Preservation Act, Endangered Species Act, Coastal Zone Management Act, and other relevant and appropriate statutes and Executive Orders.

There are many harbors, channels and navigation-dependent facilities in Connecticut and New York within Long Island Sound that must undergo periodic maintenance dredging to ensure safe navigation. Some harbors occasionally must be deepened beyond historical depths to meet changing economic and safety needs. In order to manage all of the dredged material from harbors in the LIS region generated by both Federal and non-Federal interests in the next twenty years, the DMMP and DPEIS will be identifying the potential volume of material and identifying and evaluating alternatives that could be used to manage such a volume of dredged material. Thus, future Federal and non-Federal projects can use the DMMP and its associated PEIS to help

satisfy legal requirements of NEPA, the Clean Water Act, and the Marine Protection, Research, and Sanctuaries Act (MPRSA).

The LIS DMMP will include an in-depth planning analysis of reasonable potential dredged material placement/disposal alternatives, including open-water disposal, beneficial use, upland disposal, and treatment technologies, and this analysis will be used as a basis for future individual permit and project approval decisions related to alternatives analysis for dredging in the LIS region. To accomplish this, the LIS DMMP will examine dredging needs, sediment and water quality, disposal alternatives and environmental impacts on a harbor-by-harbor basis. Consistent with the Designation Rule for the Western and Central Long Island Sound Dredged Material Disposal Sites, 40 CFR 228.14(b)(4), the DMMP will be identifying potential procedures and standards for the use of practicable alternatives for dredged material disposal in Long Island Sound. The various alternatives and the information associated with such plans will provide the Corps and other navigation users with an array of feasible options that will meet their dredged material management needs.

The LIS DMMP and DPEIS will identify a practicable, comprehensive and coordinated regional practicable strategy for technically feasible and environmentally sound management of material dredged from Long Island Sound. These documents will identify potential environmentally acceptable, practicable management alternatives that can be utilized by various dredging proponents in their analysis of options to manage dredging projects. These alternatives will likely include, but not be limited to:

- Open-water placement.
- Alternative management strategies for treating or reusing dredged materials, including the use of decontamination and sediment processing technologies.
- Beneficial reuse of dredged material such as:
 - Open and closed landfills;
 - Existing upland dredged material disposal areas;
 - Current or proposed transportation improvements;
 - Temporary dredged material storage;
 - Asphalt, cement and other aggregate use;
 - Large scale development use;
 - Brownfield remediation;
 - Use at closed mines and quarries;
 - Placement at beaches for beneficial use;

- Agricultural use;
- Habitat restoration projects.

Full public participation of affected Federal, state, and local agencies, affected Indian tribes, and other interested private organizations and parties is invited. All interested parties are encouraged to submit their names and addresses to (see **ADDRESSES**), to be placed on the project mailing list to receive fact sheets, newsletters and related public notices. The Corps will hold public scoping meetings later this year or in 2008 at different locations around the LIS region. Topics and issues to be addressed in the DPEIS, identified in part from responses to this Notice of Intent, will be summarized. The public is invited to attend the scoping meetings and identify additional issues that should be addressed in the DPEIS. The actual date, place and time of the scoping meetings will be announced in respective local newspapers and on the Corps New England District Web page.

It is estimated that the Draft PEIS will be made available to the public in the Fall of 2012.

Dated: 22 August 2007.

Lieutenant Colonel Andrew B. Nelson,
Deputy District Commander, U.S. Army Corps of Engineers, New England.

[FR Doc. 07-4274 Filed 8-30-07; 8:45 am]

BILLING CODE 3710-24-M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/ Overseas Environmental Impact Statement for Navy Atlantic Fleet Training in the Gulf of Mexico Range Complex and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) to evaluate the potential environmental effects associated with naval training in the Gulf of Mexico (GOMEX) Range Complex. The Navy proposes to support current and emerging training

Long Island Sound Regional Dredging Team

Charter

This charter defines agreement among federal and state agencies to form and administer a Regional Dredging Team to comply with the June 3, 2005 rulemaking by the U.S. Environmental Protection Agency (USEPA) that designated open-water dredged material disposal sites in Central Long Island Sound and Western Long Island Sound. To address public and agency concerns raised about the management of dredged material and the potential impacts of disposal on Long Island Sound, these disposal site designations are subject to various restrictions in the USEPA final rule. These restrictions were designed to support the goal of reducing or eliminating open water disposal of dredged material in Long Island Sound. One of these restrictions requires the formation of a Long Island Sound Regional Dredging Team (LISRDT) that will review dredging projects to ensure that a thorough effort has been conducted to identify practicable alternatives and work to ensure their use as practical. The LISRDT will communicate on a regular basis and schedule meetings as necessary. The team's efforts will enhance communication and discussion among the participating agencies, and facilitate timely review and presentation of recommendations for the management and beneficial use of dredged material from the Long Island Sound region. The procedures set out in this charter will not supersede the participating agencies' existing regulatory authorities. All regulatory agencies will retain their respective decision-making authority and time-frames for decision-making. The LISRDT will operate under this charter for that time span necessary to prepare and approve a Dredged Material Management Plan for short and long-term management of dredged sediments emanating from the Sound.

Vision

Our vision is that all dredging and subsequent management of sediments from the waters of Long Island Sound will be conducted in a manner that is practical, cost-effective and protective of the human and natural environment. Dredging is a vital component of maintaining safe commercial and recreational navigation, and maritime economic activity within the harbors, channels and waterways that border Long Island Sound in New York and Connecticut.

Goals & Objectives

The LISRDT will seek to reduce or eliminate the need for open water disposal of dredged material in Long Island Sound by ensuring that project proponents have satisfactorily evaluated practicable alternatives to open water disposal and by working to ensure that alternatives are used, whenever practical, for some or all of the material. The LISRDT is charged with evaluating information on dredged material placement alternatives submitted for projects subject to review under the Long Island Sound site designation rule. The LISRDT will also, as appropriate, voluntarily provide advice on dredged material management for any other dredging project located on or in tributaries to the Sound.

The LISRDT will provide guidance by which project proponents shall independently analyze the practicability of identified alternatives to open water disposal. Project proponents shall provide their completed alternatives analysis during the application process. At the conclusion of the LISRDT's evaluation, the LISRDT chairperson will advise the Steering Committee and applicable regulatory agencies as to whether the applicant or proponent has satisfactorily addressed the practicability of the alternative(s) with respect to the goals and objectives of the final rulemaking. Practicable alternatives will be defined as those capable of being undertaken at reasonable cost (though not necessarily the least cost), and within reasonable timeframes. Further, information on available beneficial use opportunities for dredged material will be made available to project proponents by the LISRDT as such information becomes available. Notwithstanding any review comments or recommendations of the LISRDT, all regulatory agencies will retain their respective decision-making authority and time frames for decision-making.

Membership

The LISRDT shall consist of 12 representatives: one representative each from Regions 1 & 2 of the U.S. Environmental Protection Agency, two representatives each from the New England and New York Districts of the U.S. Army Corps of Engineers, one representative from the North Atlantic Division of the U.S. Army Corps of Engineers, one representative from the National Oceanic and Atmospheric Administration/National Marine Fisheries Service, two representatives from the Connecticut Department of Environmental Protection, one representative from the New York State Department of State, and one representative from the New York State Department of Environmental

Conservation. Alternates to the LISRDT will also be identified, and assistance from technical experts will be sought on a case-by-case basis to ensure a thorough project evaluation. The LISRDT will be coordinated by a chairperson selected by the LISRDT membership and approved by the Steering Committee on a biennial basis beginning two years from the effective date of this charter. The chairperson will be responsible for scheduling and conducting meetings, preparing and distributing the meeting agenda, overseeing the accurate preparation and distribution of meeting minutes and necessary project documents, and attempting to facilitate group consensus. The chairperson will also be responsible for ensuring that each LISRDT member has been informed of pending projects for their review. Team members will be empowered to speak for their respective agencies for the purpose of identifying and supporting the efforts of the LISRDT. While the team will seek to reach consensus on all decisions, in the event consensus cannot be reached the LISRDT will elevate the issue to the Steering Committee established for the Long Island Sound Dredged Material Management Plan for direction. In the event consensus cannot be reached by the Steering Committee, the LISRDT members will forward their respective agency views to the USACE and state regulatory agencies for consideration during the permitting or project approval process.

Legislative Authorities

Managing dredged material within the geographic boundaries of Long Island Sound can involve application of many federal and state statutes, regulations and executive orders. The LISRDT members shall be cognizant of the goals and/or requirements associated with relevant statutes and strive to ensure an evaluation process that is consistent with applicable state and federal laws.

Operating Principles

When an agency receives an application or other early notification (i.e. request for sampling plans, pre-application meeting) for projects subject to the designation restrictions, that agency shall notify the LISRDT chairperson, who will notify the LISRDT members expeditiously. At the time project proponents are identified, in addition to discussions regarding testing to determine suitability for use, they will be informed of the requirements to conduct a thorough analysis of alternatives to open water disposal and the necessity of review and consideration of their proposal by the LISRDT. The project proponent also will be provided information by the state regulatory authority on alternatives (if available), with an emphasis on beneficial uses that shall be evaluated as part of the alternatives analysis.

To ensure that the most appropriate options are evaluated and selected requires that the sediment characterization process avoids burdening project proponents with unnecessary testing and costs for a project. The sediment characterization and stepwise protocol recommended by the LISRDT is as follows:

- 1) In a pre-application environment, the regulatory agencies will provide the applicant with an initial sampling plan, and the current framework for analysis of alternatives to open water disposal. The purpose of this step is to facilitate the assessment of what alternatives might be appropriate for some or all of the sediments under consideration. The initial sediment characterization would be limited to physical and, if necessary, bulk chemical testing of the material proposed for dredging. The sampling plan will prescribe the method and number of samples and their locations to characterize the sediment under consideration. Preparation and review of sampling plans for the work will follow the existing procedures of the appropriate federal and state regulatory agencies.
- 2) The dredging proponent will provide basic project information to the appropriate federal and state agencies with regulatory jurisdiction over the project. This information must include a preliminary project description that includes a schedule, project drawings, purpose and need statement, anticipated project volume, best management practices, and a list of potential placement or disposal alternatives.
- 3) Using the information gleaned from Steps 1 & 2, the project proponent will make a preliminary assessment of the management options available for that sediment, including open water disposal, in consultation with the regulatory agencies as is current practice.
- 4) The project proponent's alternatives analysis, preferred alternative, and supporting information will be submitted to the LISRDT for review and recommendations.
- 5) The LISRDT will review the project data and analyses and make its recommendations on the project proponent's options to the Steering Committee and applicable regulatory agencies. A recommendation may include different practicable management options for different volumes of the material.

6) The applicable regulatory agencies, after full consideration of the LISRDT's recommendations, and in consultation with the project proponent, may direct further sediment testing in support of the management options deemed practicable for use with the subject project. These tests may include, as appropriate, biological /ecological testing, to ensure that the correct option has been identified.

7) Once the project proponent fully complies with the requirements for analysis, and provides any other necessary documentation required for a complete application, processing of the application will proceed in accordance with applicable state and/or federal regulations.

For any dredging project that is not subject to the designation restrictions that is proposing open water disposal of dredged sediments into Long Island Sound, the LISRDT may be notified about the project by any team member; the LISRDT may then promptly offer any advice or comments to the applicable regulatory agencies regarding practicable alternatives to open water placement for that project, which may then be considered by the project applicant and the regulatory agencies having authority regarding the project. However, it is understood that such projects are not and will not thereby become subject to the designation restrictions, and that there will be no requirement to make a formal recommendation, for a project to be delayed to await any recommendations, or to include analysis of a recommendation in any permit issuance. The purpose of this option is to allow the LISRDT to maximize any viable opportunity to assist dredging proponents in identifying and analyzing all reasonably available practicable alternatives to the disposal of dredged material in Long Island Sound.

The LISRDT will identify existing locations, sites or uses potentially available as alternatives to open water disposal in the Long Island Sound region, including additional information that may be necessary to evaluate or implement the identified alternative. While a number of alternatives have been evaluated historically, for example in the site designation EIS, this information requires regular updates as new sites and innovative methods are identified. The LISRDT will manage, and share available information on potentially practicable alternatives and update the information on a regular basis. The inventory shall attempt to identify specific sites, locations, available capacity, associated costs, fees, and requirements for use. Alternatives to be considered should include, but not be limited to: closed mines and quarries; beach nourishment sites; landfills; brownfield sites; available dredged material processing facilities; habitat

restoration projects; cement or concrete plants; and transportation infrastructure improvement projects. This provision will ensure that the LISRDT can effectively implement the objectives of the designation restrictions by consolidating information on all currently available practicable alternatives to open water disposal.

Upon receipt of a completed alternatives analysis from a project proponent, the LISRDT chairperson will forward the relevant review information to each representative of the LISRDT and schedule a conference call or meeting to hold a discussion on the project. The conference call or meeting shall be held as soon as possible from the receipt of the completed alternatives analysis by the LISRDT chairperson.

The proponent's alternatives analysis shall include documentation of any available practicable alternatives (40 C.F.R. §227.16(b)) to open water disposal. When a consensus recommendation is adopted by the LISRDT or Steering Committee, copies of the recommendation will be forwarded to state and federal regulatory agencies for full consideration as part of the applicable permit review process. If a consensus recommendation is not agreed upon, then each member agency shall forward its recommendations to the federal and state regulatory agencies for consideration. Prior to issuance of any permit or authorization for projects subject to the designation restrictions, the LISRDT recommendations must be fully considered by the applicable regulatory agencies. Though recommendations of the LISRDT will be advisory in nature and will not supersede the applicable authorities of any regulatory agency to issue permits for dredging projects, no permits subject to the designation restrictions may be issued without the authorizing agency first considering the recommendations of the LISRDT, provided the recommendations are received within existing regulatory review timeframes. If a regulatory agency concurs with the LISRDT recommendation(s), appropriate enforceable condition(s) shall be included in the text of the issued permit or authorization. In circumstances where the LISRDT recommendation is not followed in the permit or authorization conditions, a full justification must be included in the decision documentation that forms the basis of the permit decision (i.e. NEPA document, Statement of Findings, state regulatory approvals, or other decision documents) a copy of which will be provided to the LISRDT chairperson for transmittal to the Steering Committee.

Recognizing that there is great annual variability in the number of dredging projects and volume of dredged material generated, and potentially available management alternatives, the LISRDT will track and document the volume of material dredged from Long Island Sound projects, and the placement methods and volumes associated with each alternative employed for each project. This information will be compiled by the LISRDT to be part of the annual report on the progress of the DMMP to be issued by the EPA.

Agreement

The state and federal agencies committing to the LISRDT agree to staff this effort within their operational capabilities, and abide by the principles of cooperation, teamwork and partnership established under this charter. Each member of the LISRDT will be responsible for assembling existing information for their respective jurisdictions, including sites potentially available for use as alternatives to open water disposal in the Region.

This charter shall be reviewed at least once every five years, and it may be revised and updated on a more frequent basis as deemed appropriate by the LISRDT membership. This Charter is deemed effective by the agencies listed below as agreed to by the members of the Long Island Sound DMMP Steering Committee on May, 28, 2007.

US Army Corps of Engineers

US Environmental Protection Agency

NOAA/National Marine Fisheries Service

State of Connecticut Department of Environmental Protection

State of New York Department of State

State of New York Department of Environmental Conservation

Effective: May 28, 2007



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NY 10278-0090

REPLY TO
ATTENTION OF

District Engineer

United States Senator Hillary Rodham Clinton
780 Third Avenue - Suite 2601
New York, New York 10017-2024
Attention: Ms. Michelle Krohn-Friedson

May 02, 2007

Dear Senator Clinton:

This is in response to your letter dated April 5, 2007, forwarding questions from Mr. Frank O'Keefe of the Village of Lloyd Harbor Conservation Board on the disposal of dredged material in Long Island Sound (Enclosure). My response will not only provide the answers to the questions posed by Mr. O'Keefe, but also provide some clarification on the Final Rule issued in June 2005 by the U.S. Environmental Protection Agency (USEPA) that designated the two long-term dredged material disposal sites in western Long Island Sound.

The Final Rule designating the Western Long Island Sound (WLIS) and the Central Long Island Sound (CLIS) disposal sites under the Marine Protection Research and Sanctuaries Act (MPRSA) contained several restrictions that apply to all disposal actions subject to the MPRSA. These restrictions apply to all Federal projects, and non-Federal projects generating more than 25,000 cubic yards (cys) of dredged material. They do not apply to smaller non-Federal projects since, as a matter of law, such projects are not subject to MPRSA requirements. Rather, any such disposal will be subject to whatever restrictions are imposed on a given project through individual permits issued under Section 404 of the Clean Water Act.

One of the fourteen restrictions in the Final Rule was the development of a regional Dredged Material Management Plan (DMMP) for Long Island Sound. In general, DMMPs are comprehensive studies carried out by the U.S. Army Corps of Engineers (Corps), in consultation with the USEPA and the affected states, to comprehensively manage dredged material in a cost-effective and environmentally acceptable manner.

The Corps' New England District has been tasked as the lead agency in preparing a Long Island Sound Dredged Material Management Plan (LIS DMMP) with support from the New York District. To help in the preparation of the DMMP the Corps has established a Project Delivery Team (PDT) consisting of the USEPA, Regions 1 and 2, the National Oceanic and Atmospheric Administration's, National Marine Fisheries Service (NMFS), the New York Department of State (NYDOS), the New York State Department of Environmental Conservation (NYDEC), and the Connecticut Department of Environmental Protection (CTDEP).

As part of the Long Island Sound DMMP, the dredging needs of the region will be investigated along with an extensive list of potential alternatives for the placement and use of dredged material to meet those needs.

Under the latest guidance of the Joint Congressional Resolution that provides funds for this Fiscal Year (FY), only very limited funding was available to initiate the LIS DMMP. The LIS DMMP has been included in the appropriations request for Fiscal Year 2008, which, if approved, will substantially increase progress on this project. Despite the limited funding, the PDT has made progress. They have prepared a draft Project Management Plan (PMP) that identifies the activities, schedule and budget needed to prepare the LIS DMMP. In addition to finalizing the PMP this FY, a series of Public Information Meetings are being planned for Connecticut and New York in June 2007 (locations and dates to be determined – Mr. Leonard Houston, Chief of the Environmental Analysis Branch will be the Point of Contact for the New York District). At these meetings, representatives from the PDT will outline the LIS DMMP process. The Public Information Meetings will thus provide the public with an early opportunity to provide their opinion and comment on the processes for completing the LIS DMMP.

An Environmental Impact Statement (PEIS) will be produced as part of the overall DMMP effort. The meetings will also serve as a vehicle for public participation in the scope of the EIS. As part of the EIS, a full range of alternatives will be addressed.

Progress on the DMMP will be reported on an annual basis by the USEPA. The first such report was published in September 2006, covering the period July 5, 2005 to July 6, 2006 and is available on the USEPA web page at: <http://www.epa.gov/region1/eco/lisdreg/index.html>.

The restrictions identified in the Final Rule also required establishing a Regional Dredging Team (RDT) comprised of regulatory and coastal policy specialists from state and Federal agencies. A Long Island Sound RDT has been formed. Its members, which consist of the same agencies listed above, have formalized a Charter identifying the mission and objectives of the RDT. In short, the RDT will review projects proposing to use the WLIS and CLIS sites under MPRSA to ensure that project proponents have satisfactorily evaluated practicable alternatives to open water disposal and are proposing to use those alternatives whenever practical, for some or all of the dredged material. The RDT has a list of currently available disposal alternatives and will continually add to this list as the DMMP progresses.

The RDT recently completed its first alternatives analysis for a project subject to the Final rule. Three earlier projects subject to the final rule did receive individual permits before the RDT was established. These projects were located in Norwalk, Connecticut and Rye and New Rochelle, New York. Only phase 1 of the Norwalk project has been dredged. The approximately 118,000 cys of dredged material removed under that phase was placed at the CLIS site. The project goal is to return the channels to their authorized depth and to create a confined aquatic disposal (CAD) cell that will serve as an alternate placement site for any dredged material determined to be unsuitable for ocean placement. Several smaller non-Federal projects not subject to the Final

Rule (having volumes of 25,000 cys or less) have placed material at the two sites since June 2005. Total volume from all of these non-MPRSA projects amounts to just under 20,000 cys placed at the WLIS site (from five projects) and approximately 97,000 cys at the CLIS site (from ten projects).

Placement of the dredged material at the WLIS or CLIS disposal sites is monitored by inspectors who are trained and certified by the Corps of Engineers. Their disposal reports are submitted to the Corps of Engineers who review this information to insure that compliance with all placement requirements have been met.

I believe the aforementioned information should address Mr. O'Keefe's concerns. If there are any further questions, please do not hesitate to contact me, or Mr. Leonard Houston, Chief of the Environmental Analysis Branch, at 917.790.8203. The Corps continues to work with our Federal and State partners to move the LIS DMMP project ahead and we look forward to continuing to work toward the completion of the DMMP.

Sincerely,



Aniello L. Tortora
Colonel, U.S. Army
District Commander

Enclosure

RODHAM CLINTON
NEW YORK
SENATOR
RUSSELL SENATE OFFICE BUILDING
SUITE 476
WASHINGTON, DC 20510-3204
202-224-4451

COMMITTEES:
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
HEALTH, EDUCATION, LABOR, AND PENSIONS
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-3204

April 5, 2007

Colonel Aniello L. Tortora
New York District
United States Corps of Engineers
26 Federal Plaza
New York, New York 10278

Dear Colonel Tortora:

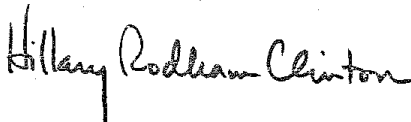
Enclosed is a letter from Mr. Frank O'Keefe, who writes on behalf of the Village of Lloyd Harbor Conservation Board. Mr. O'Keefe is requesting information on the status of the dredge waste situation in the Long Island Sound. He would also like to know what progress has been made since the EPA issued Final Regulations regarding the dumping of dredge waste in 2005.

I would appreciate your reviewing the information that has been presented and providing me with your comments. Please address your reply to my state office:

United States Senator Hillary Rodham Clinton
780 Third Avenue, Suite 2601
New York, New York 10017-2024
Attention: Michelle Krohn-Friedson

Your cooperation and assistance are greatly appreciated. I look forward to hearing from you soon.

Sincerely yours,



Hillary Rodham Clinton

HRC/MKF/pmk

2007 APR 12 PM 5 17

PRINTED ON RECYCLED PAPER

Senator Hillary Rodham Clinton
Three Greenway Plaza
155 Pinelawn Road
Suite 250 North
Melville, NY 11747

February 22, 2007

Dear Senator Clinton:

The Environmental Protection Agency (EPA) issued Final Regulations in June of 2005 regarding the dumping of dredge waste in Long Island Sound. These regulations set standards for interim dumping of dredge wastes in the Sound, mandate the creation of a regional team to study alternatives to dumping (Regional Dredging Team); and require the development of a plan for disposal of dredge waste that considers practical alternatives to open water dumping.

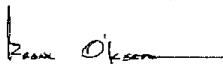
Our concern is that, given the eight-year time frame for implementing these regulations, nothing is being done in the short run to arrive at the best solution. We firmly believe that open water dumping is a poor and environmentally-injurious alternative.

We respectfully ask that you make an inquiry to the EPA, the Army Corps of Engineers and the offices of the Governors of New York and Connecticut to determine the following:

- Has dumping of dredged materials occurred since the Final Rule was issued in July 2005? If so, how much dumping has occurred? Has there been monitoring of the dumping to ensure compliance with ocean dumping regulations (as required by the regulations)? Who is doing the monitoring?
- Has a Regional Dredging Team been designated? Who is on the Regional Dredging Team? As per the regulations, the Regional Dredging Team is charged with determining alternatives to open water dumping. What has been done to identify alternatives to open water dumping?
- The regulations require development of a Dredged Materials Management Plan (DMMP). Who has been charged with the responsibility of developing the DMMP? What progress has been made in this regard?

Thank you for your assistance in this critical matter.

Kindest regards,



Frank O'Keefe
Village of Lloyd Harbor Conservation Board Member
Office Phone No. 516-470-0900
E-mail: frank@analectllc.com

Attachment: 40 CFR Part 228 EPA Dumping Regulations



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
CONNECTICUT MARITIME COMMISSION
2800 Berlin Turnpike Newington, CT 06131
(860) 594-2550



COPY

8 November 2006

The Honorable Richard Blumenthal
Attorney General of Connecticut
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

Dear Mr. Attorney General:

As Chairman of the Connecticut Maritime Commission (CTMC), I have been asked by the Commission to bring a matter of importance to your attention. The issue is Connecticut's rights relative to the Ambro Amendment to the Marine Protection, Research & Sanctuary Act (MPRSA) as well as to a recent routine program change to the Coastal Zone Management Program initiated by the State of New York. At risk is the viability of Connecticut's harbors and waterways.

I believe you are aware that the Ambro Amendment to the MPRSA has the net effect of closing dredge material disposal sites in Long Island Sound unless the State has an approved Dredge Material Management Plan (DMMP). The Federal Environmental Protection Agency (EPA) recently published its *First Annual Report Regarding Progress in the Developing a Dredged Material Management Plan for the Long Island Sound Region* which contains background information. Additionally, approximately \$1.7M has been placed in both the House and Senate versions of the US Army Corps of Engineers' (ACOE) budget for development of the Long Island Sound DMMP. This is but a small step in what the ACOE has described as a five-to-six year, \$15M project.

Concern was raised at the 21 September 2006 meeting of the CTMC that recent action taken by the State of New York under the Coastal Zone Management (CZM) program would provide additional power to New York to potentially stop dredging projects in Connecticut waters. Federal CZM allows activities in the coastal areas of one state to be reviewed by another state with regard to consistency of that reviewing state's CZM plans. The ability to review and intervene has existed since passage of the CZM Act in 1972, but a recent Federal regulatory change required that the activity and the geographic area subject to interstate consistency review be listed in the State's CZM program. **The recent change to the New York-approved list defines the area of their concern to include the discharge of dredged and fill materials on the waters of Long Island Sound and Fishers Island Sound from the New York/Connecticut state line to the 20 foot bathymetric contour closest to the Connecticut shoreline.** The ACOE New England Division's representative at the 21 September CTMC meeting stated that the

Attorney General Blumenthal

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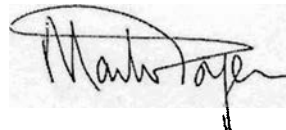
November 8, 2006

ACOE Office of Council was in the process of reviewing the possible impact to projects in Connecticut. It is possible that the New England Division of the ACOE would have to get a Water Quality Certificate (WQC) and Coastal Consistency concurrence from both Connecticut **and** New York depending on the interpretation.

At issue is the fact that New York has made the program change without providing the Connecticut general public the opportunity to comment. The public, as well as affected Federal and State agencies, has the opportunity to comment to the National Oceanic and Aeronautic Administration's Office of Coastal Resource Management (OCRM). However, comments must be limited to whether or not the proposed list meets the standards for a routine program change, or whether or not the change is substantial enough to require a program amendment which is a more rigorous administrative process. The Connecticut Department of Environmental Protection was reportedly involved in consultations with New York on these changes, but Federal rules do not allow one State to "veto" another State's list. Thus, the CTMC approved a motion to send a letter to you asking for an interpretation of Connecticut and New York's rights both before and after the change to the language of the New York Coastal Management Program.

Enclosed for your convenience are copies of the *Proposed Routine Program Change – New York Coastal Management Program* and the *First Annual Report Regarding Progress in Developing a Dredged Material Management Plan for the Long Island Sound Region*. Any information or guidance you could provide would be greatly appreciated.

Very truly yours,
CONNECTICUT MARITIME COMMISSION

A handwritten signature in black ink, appearing to read "Martin Toyen", written over a light blue rectangular background.

Martin Toyen
Chairman

MT:cs
Enclosures (2)

cc: Commissioner Carpenter - Connecticut Department of Transportation
Commissioner McCarthy - Connecticut Department of Environmental Protection



DEPARTMENT OF THE ARMY
NORTH ATLANTIC DIVISION, CORPS OF ENGINEERS
FORT HAMILTON MILITARY COMMUNITY
GENERAL LEE AVENUE
BROOKLYN, NY 11252-6700

IN REPLY REFER TO

CENAD-PDR (1105-2-10b)

21 June 2006

MEMORANDUM FOR Commander, U.S. Army Engineer District, New England, ATTN:
CENAE-PP-P (Mr. Byrne)

SUBJECT: Long Island Sound Dredged Material Management Plan (DMMP) Connecticut, New York, and Rhode Island – Preliminary Assessment (PA)

1. References:

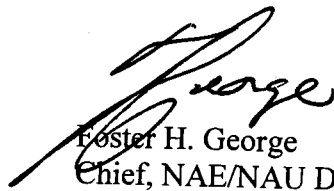
(a) CENAE-PP-P E-Mail (Keegan) dated 21 April 2006, transmitting PA and technical appendices for subject DMMP, copy enclosed.

(b) CENAD-PDS memo dated 20 June 2006, regarding subject as above, copy enclosed.

2. Based upon reference 1b, the preliminary assessment document is approved. The district may proceed with the continued coordination efforts with all participating States and agencies for the development of a Project Management Plan for the DMMP.

3. Please contact the Civil Works lead program manager, Mr. Peter Doukas of my staff at 718.765.7068 should you have any questions or require additional information.

Encl


Foster H. George
Chief, NAE/NAU District Support Team
Programs Directorate



STATE OF NEW YORK

GEORGE E. PATAKI
GOVERNOR

May 9, 2006

Dear Chairman Domenici and Ranking Member Reid:

As you move forward with this year's Energy and Water Development appropriations bill, I would like to bring to your attention a number of environmental and energy infrastructure projects and programs important to New York State, and for which I seek your support in providing adequate federal funds.

- The New York City Watershed Program provides high quality affordable drinking water for the eight million residents of New York City, as well as one million upstate consumers--essentially half of the population of our State. Funding for the program is authorized in the Water Resources Development Act (WRDA) for up to \$42.5 million. The innovative New York City Watershed Program ensures the continued protection of the Nation's largest unfiltered drinking water supply in a unique manner that avoids the need to construct a drinking water filtration plant at an estimated cost of \$8-10 billion. An appropriation of \$15 million to the United States Army Corps of Engineers for FY 07 is needed to ensure we continue this essential and cost-effective drinking water initiative.
- Only two years ago, I wrote to you to express my concern about a decision by the Army Corps to reprogram funds which Congress had appropriated for New York City Watershed projects to other activities. Upon the direction of Secretary Rumsfeld, the Corps agreed to fully restore these funds, totaling approximately \$7 million. However, language in the FY 06 Energy and Water Development Appropriations Bill generally prohibits the Corps from restoring reprogrammed funds. I urge you to amend the FY 06 language so that the Corps can honor its agreement to restore the Watershed funds.
- Section 1105 of WRDA authorized \$5 million annually to fund the operation, maintenance and rehabilitation of the New York State Barge Canal. For FY 07, the full authorized amount will be necessary to ensure the effective operation of the Barge Canal. In addition, a total of \$9 million--half of the \$18 million authorized pursuant to Section 553 of WRDA of 1996, as amended by Section 341 of WRDA of 1999--will be needed to address critical rehabilitation, renovation, preservation and maintenance needs along the aging New York State Canal system.



The Honorable Pete V. Domenici
The Honorable Harry Reid
May 9, 2006
Page Two

- The Port of New York and New Jersey is an extraordinary economic engine for the entire region and supports 40,000 terminal-based jobs, 189,000 regional off-terminal jobs and an additional 186,000 jobs nationwide. The Army Corps has deemed its project to dredge and deepen the Port's channels to be a National Priority and the President's budget includes \$90 million for continued construction. Deepening the channels of the Port is essential to continue to accommodate large cargo ships. This project will ensure that the Nation's major gateway on the Atlantic Ocean continues to fuel the national economy as it has done for many years.
- The Long Island Sound Dredged Material Management Plan, or LIS DMMP, is a cooperative effort of New York, Connecticut, the US EPA and the Army Corps to maintain safe, environmentally sound and economically viable navigation in the Sound's ports and harbors. This initiative is unprecedented and, given the need to ensure safe navigation which protects the Sound's precious natural resources, the assurance of adequate funding is vital. An FY 07 appropriation of \$3.5 million to the Corps is needed for this project to proceed. An additional appropriation of \$1.5 million to design and site a project in New York that will demonstrate the innovative reuse of dredged material will complement a similar demonstration project which the Corps is now designing for Bridgeport, Connecticut.
- For several years the Department of Energy has implemented a radioactive waste management demonstration project at West Valley on a 90/10 federal/state cost-sharing ratio specified in the West Valley Demonstration Project Act. The Act specifies the work which DOE must undertake to remediate this site, and the President's budget recognizes the importance of this issue by including \$73 million for DOE activities at West Valley. New York supports a higher number--\$95 million--to sustain jobs and ensure that DOE fulfills its commitments at the site.
- Several New York State agencies and authorities are working together to identify shovel-ready sites for the development of advanced "clean coal" power plants by private sector power developers. The State is committed to assisting these power developers with financing through a number of economic and regulatory incentives, including the establishment of a Clean Coal Initiative Fund of \$10 million annually over five years. Federal assistance with development of the technology and capitalization of the Clean Coal Initiative Fund would help to advance this State effort and would support the President's goal of ensuring that our Nation meets its energy needs through clean, sustainable technologies.

The Honorable Pete V. Domenici
The Honorable Harry Reid
May 9, 2006
Page Three

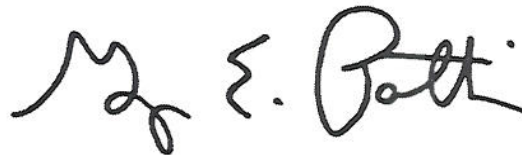
- New York, in order to help our nation reduce its dependence on foreign oil, is seeking a federal appropriation to help develop innovative technologies to produce ethanol from biomass feedstocks containing cellulose. The State is making \$20 million available to help construct a pilot-scale cellulosic ethanol facility and then transfer the resulting production capacity to commercial-scale, and seeking further federal funding to assist our effort.

- I also strongly support the President's request to provide \$45 million for project engineering and design for the next-generation National Synchrotron Light Source, or NSLS II, that will be built at Brookhaven National Lab. This new facility will provide academia, government and industry scientists from all parts of the United States with world-leading capabilities for basic and applied research in materials and nanoscience, life-sciences and chemistry, and geosciences. I have committed \$30 million of New York State funds to construct a Joint Photon Sciences Institute, or JPSI, at the Lab to help maximize the benefits of NSLS II. The JPSI would serve as the intellectual center for development and applications of the photon sciences and as a gateway for users of the NSLS II. Together with this State investment, federal support for the NSLS II will ensure that United States remains the world leader in this critical research.

- I am strongly committed to developing hybrid vehicles in New York State, and I encourage you to appropriate the funds necessary to support federal efforts to help us nurture this emerging technology.

All of these requests provide tangible benefits to New York State's environment through concrete actions that will improve our infrastructure and address on-going problems that threaten our natural resources, public health and environmental quality. I appreciate your assistance to the State for these high priority matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark E. Roth". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

The Honorable Pete V. Domenici
Chairman
Subcommittee on Energy and Water, and
and Related Agencies
SD-133 Dirksen Senate Office Building
Washington, D.C. 20510-6030

The Honorable Harry Reid
Ranking Minority Member
Subcommittee on Energy and Water,
and Related Agencies
SD-133 Dirksen Senate Office Building
Washington, D.C. 20510-6030



STATE OF NEW YORK

GEORGE E. PATAKI
GOVERNOR

May 9, 2006

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The Honorable David L. Hobson
The Honorable Peter J. Visclosky
May 9, 2006
Page Two

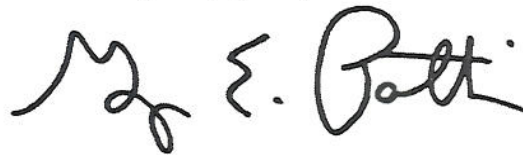
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The Honorable David L. Hobson
The Honorable Peter J. Visclosky
May 9, 2006
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Very truly yours,

A handwritten signature in black ink, appearing to read "Mark E. Roth". The signature is fluid and cursive, with a large initial "M" and a distinct "Roth" at the end.

The Honorable David L. Hobson
Chairman
Subcommittee on Energy and Water
Development
2362-B Rayburn House Office Building
Washington, D.C. 20515-6020

The Honorable Peter J. Visclosky
Ranking Minority Member
Subcommittee on Energy and Water
Development
2362-B Rayburn House Office Building
Washington, D.C. 20515-6020



Connecticut Harbor Management Association

March 21, 2005

SUMMARY OF FINDINGS AND RECOMMENDATIONS **FROM A STUDY** **BY THE CONNECTICUT HARBOR MANAGEMENT ASSOCIATION¹** **OF THE FEDERAL MAINTENANCE DREDGING PROCESS** **IN THE STATE OF CONNECTICUT**

By Geoffrey B. Steadman and John C. Roberge, P.E.²

INTRODUCTION

The Connecticut Harbor Management Association (CHMA) has studied the process for planning and conducting maintenance dredging³ of Federal navigation projects in Connecticut ports and harbors. The navigation projects include Congressionally authorized channels and anchorage basins supporting waterborne commerce, recreational boating, commercial fishing, and other beneficial uses of Long Island Sound (LIS). The purpose of the CHMA study is to develop information and recommendations to improve the maintenance dredging process and thereby promote continued and timely dredging of the navigation projects by the U.S. Army Corps of Engineers (USACE).

It is demonstrated that lack of timely maintenance dredging of Connecticut's ports and harbors will have far-reaching economic, social, and environmental impacts. Without maintenance dredging, for example, there will be dramatic increases in truck traffic on State highways to transport fuel oil, gasoline, and other bulk products currently brought to Connecticut port facilities via waterborne transportation. Increased truck traffic will result in substantial adverse environmental and

¹ The Connecticut Harbor Management Association is a State-wide, not-for-profit organization representing municipal harbor management commissions, State of Connecticut harbor masters, and others concerned with Connecticut's harbors and marine resources. The mission of the CHMA is to share information and facilitate coordination to address issues of common interest to its members.

² Geoffrey Steadman, a member of the Board of Directors of the Connecticut Harbor Management Association, is an environmental planner and sole proprietor of a consulting practice based in Westport, Connecticut. John Roberge is a member of the CHMA and the principal of Roberge Associates Coastal Engineers, LLC, based in Stratford, Connecticut.

³ For the purpose of this report, maintenance dredging is defined as the mechanical or hydraulic excavation of sediment and other material from aquatic areas within the boundaries of previously dredged Federal navigation projects, undertaken for the purpose of maintaining adequate depths for navigation, boat mooring, and anchoring.

other impacts on our coastal communities. In addition, reduced access to LIS for recreational boating will have a devastating impact on the State's boating and tourist industries.

Timely maintenance dredging is clearly needed to maintain and enhance the viability of the State's marine-related economies, the beneficial quality of life associated with the Connecticut coast, and opportunities for public access to LIS. At the same time, there is a need to ensure that dredging and dredged material disposal is carried out in a manner that does not cause any significant degradation of the vital natural resources and ecological functions of LIS. This potential conflict represents a continuing challenge for coastal managers who must balance goals for conservation of environmental resources with goals for beneficial use of LIS.

The current process to achieve maintenance dredging of Federal navigation projects consists of a series of complex steps and decisions involving a number of agencies as well as the U.S. Congress and generally taking years to complete. That process as it affects each of Connecticut's ports and harbors can be improved.

Planning for Federal maintenance dredging projects in Connecticut is currently proceeding against a background of complex issues and studies concerning the open water disposal of dredged material in LIS. The four currently used LIS dredged material disposal sites have not been designated by the U.S. Environmental Protection Agency (EPA) as required by the Federal Marine Protection, Research and Sanctuaries Act (MPRSA)—key Federal legislation controlling disposal of dredged material in LIS. In accordance with the MPRSA, the Central Long Island Sound (CLIS) disposal site was closed in February 2004 to all Federal and certain private dredging projects; the site will not be available for use by those projects until such time as it may be designated by the EPA pursuant to the MPRSA.

The first phase of an ongoing Environmental Impact Statement (EIS) process by the EPA and USACE for designating one or more sites for open water disposal of dredged material in LIS was targeted for completion in 2004. In June 2004, however, the State of New York determined that the EPA's proposed designation of dredged material disposal sites (including the CLIS site) pursuant to the EIS is inconsistent with New York's Coastal Management Program. In addition, New York's coastal management agency indicated it will pursue legal remedies if the EPA designates the sites over New York's objection. As a result, the EPA put the designation process on hold pending consideration of New York's concerns. In March 2005, the EPA continues to pursue discussions with both New York and Connecticut in an effort to address New York's objection to designation of LIS dredged material disposal sites. Those discussions have focused on matters concerning preparation of a comprehensive dredged material management plan (DMMP) for LIS.

In conducting its study of the Federal maintenance dredging process, the CHMA's study committee worked closely with the Dredge Task Force of the Connecticut Maritime Coalition. Information was obtained from representatives of the State's marine industry, environmental organizations, the USACE, the Connecticut Department of Environmental Protection's Office of Long Island Sound Programs (DEP OLISP), Connecticut's Attorney General, the coastal management programs of other northeastern states, the Federal Office of Ocean and Coastal Resource Management, the offices of Connecticut's U.S. Congressional delegation, and others. Information was also obtained from numerous reports and documents concerning dredging and dredged material management in LIS and other locations.

This report provides a summary of the findings and recommendations of the CHMA dredging study, numbered for reference purposes and not to denote priority. Key findings and recommendations concern the role of the State of Connecticut in the Federal maintenance dredging process. Currently, the State's principal role is that of a regulator of the process to ensure that no significant adverse impacts associated with dredging and dredged material disposal affect the State's coastal resources. In Connecticut, unlike some other coastal states, there is no State agency or official serving as a planner or facilitator for advancing the Federal dredging process in the most timely manner, nor is there any agency or official working to coordinate or prioritize the timing of the different projects now needed. It is recommended that a specific State agency with powers and duties for this purpose and sufficient resources and authority to carry out those powers and duties be designated by the Connecticut Legislature.

Federal actions to improve the maintenance dredging process are also needed. It is recommended that the EPA proceed with designation of LIS dredged material disposal sites in coordination with preparation of a comprehensive DMMP for LIS. That DMMP should be prepared by the USACE in accordance with agreements among the USACE, EPA, the States of Connecticut and New York, and other stakeholders. Those agreements should reflect recognition by the two states of their responsibility to work together as neighbors to address LIS-wide issues through effective planning and coastal management initiatives.

SUMMARY OF FINDINGS

1. **Federal channels and anchorage basins serve many Connecticut towns.** Currently active Federal navigation projects authorized by Acts of Congress and maintained by the U.S. Army Corps of Engineers are found in 28 Connecticut waterways. These projects include channels and, in some locations, anchorage basins authorized in the 1800's and early 1900's to support waterborne commerce. Today, the navigation projects also serve recreational boating interests.
2. **Major ports and recreational harbors depend on Federal navigation projects.** Federal navigation projects in Connecticut waterways support a variety of industrial, commercial, and recreational activities; they serve the State's three major ports — at Bridgeport, New Haven, and New London — as well as small recreational harbors.
3. **Water-dependent uses are vital to the State's economy.** The economic benefits of the water-dependent businesses and activities making use of the State's Federal navigation projects are substantial—measured in billions of dollars. A recent study for the Connecticut Maritime Coalition finds that the four industry components of Connecticut's overall maritime economy (transportation, manufacturing and services, recreation, and commercial fishing) generate direct revenues in excess of \$2.6 billion annually in the State.
4. **Environmental benefits of waterborne transportation are substantial.** Waterborne transportation utilizing Federal navigation projects results in substantial environmental and other benefits associated with reduced truck traffic on the State's highways, including reduced congestion and vehicle emissions and lower highway maintenance costs. When the Port of New Haven, for example, received over 1.8 billion gallons of petroleum products via waterborne transportation in a recent year, this was reported as the equivalent of 278,000 highway truck deliveries. On a smaller scale, a waterfront terminal in Norwalk Harbor in 1999 received 25

barge deliveries totaling 13,000,000 gallons of fuel oil; each barge handled 520,000 gallons per trip. Approximately 2,000 tanker truck deliveries utilizing I-95 would have been required to deliver the same amount of product considering that a tanker truck can hold about 6,500 gallons of fuel oil. That Norwalk terminal, however, suspended barge deliveries of fuel oil in 2003 due to lack of maintenance dredging of the Federal channel; since then, all of its fuel oil deliveries have been by truck. Clearly, a switch from waterborne to highway transportation can cause significantly adverse environmental and other impacts; conversely, enhancement of existing port and navigation facilities and increased waterborne transportation can reduce existing truck traffic on I-95, thereby providing substantial quality of life benefits.

5. **Ongoing shoaling affects the authorized dimensions of the navigation projects and creates the need for maintenance dredging.** Federal navigation projects in Connecticut waterways are subject to naturally occurring siltation (shoaling) and therefore require timely and economical maintenance dredging to maintain beneficial use by industrial, commercial, and recreational users. Such dredging is needed to maintain the advantages of waterborne transportation, the viability of water-dependent businesses, the competitive advantage of Connecticut ports to attract new businesses, and public access to LIS by the thousands of people who enjoy recreational boating, including visiting boaters and tourists.
6. **Lack of timely maintenance dredging increases environmental and public safety risks.** While specific procedures and requirements are in place for guarding against and responding to fuel spill emergencies, it is apparent that timely maintenance dredging of navigation channels to maintain authorized depths and widths generally decreases the risk that vessels could run aground, including vessels carrying petroleum products which account for about 75% of all waterborne commerce on Long Island Sound. It is also apparent that timely maintenance dredging decreases the risk that recreational vessels will run aground and improves the use of certain Connecticut harbors as “harbors of refuge.”
7. **A backlog of needed maintenance dredging projects exists.** A number of navigation projects are currently in need of maintenance dredging to restore authorized channel and/or anchorage dimensions for the purpose of maintaining safe and efficient navigation and the economic advantages of waterborne transportation. In 2005 the Corps of Engineers reports a considerable backlog in Federal maintenance dredging projects in Connecticut. Reflecting the current length and complexity of the Federal maintenance dredging process (see no. 11 below), planning for the Norwalk Harbor and Bridgeport Harbor dredging projects was initiated in 1997 and is still ongoing. The only Federal maintenance dredging in the State during the 2004/05 dredging “season” was in the small recreational harbor of Southport in the Town of Fairfield.
8. **Harbor management commissions have an important function for advancing the dredging process.** Municipal harbor management commissions established pursuant to Section 22a-113k of the Connecticut General Statutes may pursue an important role in advancing the Federal maintenance dredging process. A number of State-approved and locally adopted harbor management plans call for the harbor management commission to serve as the municipal advocate for requesting Federal maintenance dredging and to work cooperatively with the Corps of Engineers and Connecticut Department of Environmental Protection to advance the dredging process.

9. **State-wide organizations support recommendations for improving the dredging process.** Three State-wide organizations representing the diverse interests of Connecticut's maritime community—the Connecticut Harbor Management Association, Connecticut Maritime Coalition, and Connecticut Marine Trades Association—have conducted research on Connecticut dredging issues and collaborated for the development of recommendations to improve the Federal maintenance dredging process.
10. **National Dredging Policy recommendations have not been implemented in Connecticut.** Issues concerning dredging and dredged material management are of national significance and interest. Federal recommendations to facilitate the planning of Federal maintenance dredging projects as contained in the National Dredging Policy have not been implemented in the State of Connecticut. For example, long-range dredged material management plans have not been prepared for the operating Federal navigation projects and regional/local dredged material planning groups have not been created to aid in the development of such DMMPs.
11. **The maintenance dredging process is of significant length and complexity.** The Federal maintenance dredging process in Connecticut is inherently complicated and lengthy, consisting of a series of specific steps and decisions involving a number of agencies, principally the Corps of Engineers and Connecticut Department of Environmental Protection (acting as the State's coastal management agency) as well as the U.S. Congress. The basic steps in the dredging process are:
 - a) Submittal of a request for dredging to the USACE;
 - b) Completion of a Condition Survey of Navigation Project depths;
 - c) Assembly and review of information concerning use of the navigation project;
 - d) Justification of economic benefits of Federal maintenance dredging;
 - e) Establishment of compliance with the USACE "Open to All on Equal Terms" policy;
 - f) Sampling and analysis of material to be dredged;
 - g) Preparation of dredged material disposal plan;
 - h) Application for and receipt of State approvals (Coastal Zone Consistency and Water Quality Certification);
 - i) Initiation of the Federal budgeting process proceeding to receipt of Federal funds;
 - j) Achievement of compliance with National Environmental Policy Act requirements including preparation of Environmental Assessment or Environmental Impact Statement;
 - k) Preparation of dredging plans and specifications;
 - l) Solicitation of bids and awarding of contract; and
 - m) Implementation of the maintenance dredging project.

As examples of the length and complexity of the process, planning for maintenance dredging of the harbors of Norwalk and Bridgeport has been ongoing for eight years; eight years were needed to obtain project approvals and funding for the recently completed Southport Harbor maintenance dredging project which was completed in less than two months.

12. **Federal funding is uncertain.** The Federal budgeting process followed by the Corps of Engineers to obtain funds for Federal maintenance dredging projects is a lengthy process that may take 16 to 18 months. To obtain funding through this process, a project request initiated by the USACE New England District must be successfully passed through the USACE North Atlantic Division to the USACE Headquarters and then to the Office of Management and

Budget for inclusion in the President's budget request to Congress. The request must then make its way through various appropriations committees to the final Energy and Water Development Appropriations Act passed by Congress. Projects for maintenance of Connecticut harbors, excepting the three major ports, are given low priority in the USACE budgeting process and funding for those projects cannot be expected through that process. Instead, the affected municipality must pursue project funds through a Congressional "add" or "earmark" to the Appropriations Act providing funds for USACE projects. This approach is problematic because of its uncertainty. Based on recent experience, it cannot be expected that the total amount of needed funds will be appropriated in a single year. Also, the final appropriations bill is typically not passed until after the start of the limited dredging "season" which begins October 1 of each year. (See no. 14 below.)

The City of Norwalk's experience is illustrative of the funding issues. The total cost of the USACE's planned maintenance dredging project for Norwalk Harbor is estimated to be \$7.4 million. The City has requested project funding for each of the past three Federal fiscal years. To date, Congress has authorized \$1.95 million for use by the USACE for the project.

The USACE will not request project funding and the Congressional delegation will not consider an "earmark" of funds until the necessary approvals are obtained from the Connecticut Department of Environmental Protection, including a State Water Quality Certificate which is, in effect, the project "permit." (See no. 16 below.) The uncertainties and delays in obtaining project funding give rise to concern that the Certificate, which is issued for a three-year period with provision for a one-year extension, could expire before the funding is obtained. If that should happen, significant aspects of the lengthy and costly surveying, testing, and application process would have to be repeated.

Another consideration is that the USACE typically requires four months to complete its bidding and contracting process for a dredging project and will not start that process until it is assured that Federal funds will be available for the work. To begin work by the October 1 start of the dredging season, the bidding and contracting process must therefore be initiated by June 1. At that time, however, there is no certainty that the requested funds will be included in the Appropriations Act for the upcoming Federal Fiscal year beginning on October 1. Once funds are allocated, however, they may be carried over and used in the subsequent year and also carried over until such time as all of the needed funds are obtained.

13. **No funding support is provided by the State of Connecticut.** Connecticut municipalities may be required to contribute a substantial amount to the cost of a Federal maintenance dredging project. Under current Federal rules, a municipality requesting Federal maintenance dredging may be required to sign a "Project Cooperation Agreement" with the Corps of Engineers and contribute, prior to dredging, a predetermined percentage of the extra cost for any special handling of dredged material (e.g., disposal of material not suitable for disposal in Long Island Sound). The State of Connecticut provides no funding support for project planning or implementation. Again, the City of Norwalk's recent experience is instructive. The City's cost-share for disposal of 30,000 cubic yards of dredged material not suitable for disposal in LIS will be about \$200,000. The local cost-share for disposal of unsuitable material to be dredged from Bridgeport Harbor is expected to be significantly greater. (See no. 19 below.)

14. **Requirements for fisheries protection affect project implementation.** Implementation of maintenance dredging projects is significantly affected by the imposition of specific dredging “windows” established by the Department of Environmental Protection to avoid adverse impacts on spawning shellfish and finfish in the harbors to be dredged. Establishment of these windows as they apply to protection of finfish is generally not based on harbor-specific data but on general guidelines. A typically imposed window limits dredging to the period beginning October 1 and ending January 31.
15. **Unlike some other coastal states, the State of Connecticut does not strive to advance the maintenance dredging process.** There is no State official or agency in Connecticut working in any significant manner to advance or facilitate the maintenance dredging of Federal navigation projects. The experience of other coastal states that take a more active role in the dredging process, including Maine, Massachusetts, New Jersey, New York, and Rhode Island, provides examples of opportunities for improving the process in Connecticut.
16. **The principle role of the State of Connecticut in the maintenance dredging process has been that of a regulator of the process.** In this regard, the State acts through the Department of Environmental Protection’s Office of Long Island Sound Programs to determine the consistency of the proposed Federal maintenance dredging project with the Connecticut Coastal Management Program and to evaluate potential water quality impacts and issue a Water Quality Certificate. These State actions are carried out pursuant to Section 307 of the Federal Coastal Zone Management Act and Section 401 of the Federal Clean Water Act, respectively. The Water Quality Certificate is valid for a period of three years and provides for a one-year extension.
17. **Connecticut statutes support maintenance dredging of Federal navigation projects.** The Connecticut Coastal Management Act (CCMA; Section 22a-90 through 22a-112 of the Connecticut General Statutes) provides the basis for Connecticut’s Coastal Management Program. The CCMA establishes legislative goals and policies to achieve balance between conservation of the State’s natural coastal resources and beneficial use and development of those same resources in the public interest. Included are policies in support of maintenance dredging of Federal channels and anchorage basins, including the policy *to encourage, through the state permitting program for dredging activities, the maintenance and enhancement of existing federally-maintained navigation channels, basins, and anchorages...* (Sec. 22a-92(c)(1)(C) of the Connecticut General Statutes). Further, Federal navigation projects are *water-dependent uses and facilities and resources in the national interest* as defined in the CCMA. The CCMA establishes policies concerning “development, facilities, and uses” in the coastal area as well as policies concerning the protection of coastal land and water resources. The Act does not attach a higher priority to either category of policies.
18. **State coastal managers describe “conflict of interest” issues if the Department of Environmental Protection should strive to advance the maintenance dredging process.** State of Connecticut coastal managers believe it would be a conflict of interest for the DEP’s Office of Long Island Sound Programs to serve as a facilitator or advocate of the Federal maintenance dredging process. The conflict would result, they say, because the agency regulates those same projects through its coastal zone consistency and water quality certification review. (See no. 16 above.) Further, recent experience indicates that Connecticut’s coastal managers generally do not believe it is the role of the DEP OLISP to pursue initiatives to “advance” the

legislative goals and policies established in the Connecticut Coastal Management Act, including the goals and policies concerning maintenance of Federal navigation projects. National coastal management officials emphasize that state coastal management agencies should strive to address coastal management issues through proactive planning and facilitation as well as through regulatory approaches.

19. **Contaminants are found in some dredged sediments.** A significant issue that may affect the Federal maintenance dredging process is the presence of various contaminants, including heavy metals, polyaromatic hydrocarbons, pesticides, and other toxic substances in sediments to be dredged from some of the State's harbors. As a result, not all dredged material is suitable for open water disposal in Long Island Sound. To restore authorized channel depths and maintain the viability of the Port of Bridgeport, for example, appropriate means of disposal must be found for an estimated 750,000 cubic yards of dredged material not suitable for open water disposal. The planned Norwalk Harbor maintenance dredging project involves excavating Confined Aquatic Disposal (CAD) cells in the Harbor floor to sequester 30,000 cubic yards of dredged material not suitable for disposal in LIS.
20. **The State of Connecticut may specify conditions for dredged material disposal that are not required by Federal agencies.** The Water Quality Certificate issued by the Department of Environmental Protection's Office of Long Island Sound Programs for a proposed maintenance dredging project may specify conditions for managing dredged material disposal that are not required under Federal guidelines. For example, the Corps of Engineers and Environmental Protection Agency determined that the approximately 350,000 cubic yards (cy) of sediment to be dredged in phase two of the Norwalk Harbor maintenance dredging project is suitable for unconfined disposal in Long Island Sound. Pursuant to its State authorities, however, the DEP OLISP has required that the dredged material be "capped" with 75,000 cy of material from an unspecified location. While the USACE has expressed disagreement with this requirement, the EPA defers to authority of the DEP OLISP to impose additional sediment management requirements above those required by Federal guidelines. There is no certainty that suitable material will be available at the time required by the DEP OLISP to "cap" phase two of the Norwalk project.
21. **Current State solid waste regulations do not encourage beneficial use of dredged material.** Current Connecticut statutes and regulations concerning solid waste management do not facilitate the beneficial use of suitable dredged material for upland applications, including use of dredged material for structural and nonstructural fill. This issue has arisen during discussions concerning proposed maintenance dredging by the Corps of Engineers of the Housatonic River Federal channel. In December 2001, representatives of the Department of Environmental Protection's Office of Long Island Sound Programs agreed to review the State's existing policies and regulations concerning solid waste for the purpose of considering possible modifications to facilitate beneficial upland use of dredged material. To date, no such modifications have been proposed.
22. **State-wide planning for dredging and dredged material management is lacking.** Dredging and dredged material disposal for maintenance of Federal navigation projects in Connecticut is not being planned or managed on a State-wide basis. There are no long-range, comprehensive dredged material management plans for Connecticut ports and harbors nor for dredged material disposal in Long Island Sound. In 1980, the New England River Basins

Commission adopted an “Interim Plan for the Disposal of Dredged Material from Long Island Sound” which provided an initial framework for managing dredged material disposal at open water sites in LIS. Although this plan was never intended to be definitive or final, no final plan was subsequently prepared. In 1998, the Department of Environmental Protection’s Office of Long Island Sound Programs issued a report from a study conducted to gather background information for updating the interim plan.

- 23. Ongoing issues concerning open water disposal of dredged material in Long Island Sound affect planning for maintenance of Connecticut ports and harbors.** Planning for Federal maintenance dredging projects in Connecticut is currently proceeding against a background of complex issues and studies concerning the open water disposal of dredged material in LIS. Historically, most of the material dredged from Connecticut harbors has been placed in specific open water disposal sites in LIS. Four disposal sites—the Western Long Island Sound (WLIS), Central Long Island Sound (CLIS), Cornfield Shoals, and New London disposal sites—have been used in recent years. Some of the principal issues now being addressed concern the application of the requirements of the Federal Marine Protection, Research and Sanctuaries Act (also known as the Ocean Dumping Act) to dredged material disposal in LIS.

Congress amended the MPRSA in 1980 (the Ambro Amendment) to require that disposal of dredged material in LIS from all Federal dredging projects and from nonfederal projects exceeding 25,000 cubic yards of material be subject to the MPRSA’s environmental testing criteria. These criteria are more stringent and costly to comply with than the standards established under the Federal Clean Water Act which had previously been the principal Federal legislation controlling all dredged material disposal in LIS.

A 1988 opinion by the United States Court of Appeals for the Second Circuit (*Town of Huntington v. Marsh*) describes the intention of Congress in passing the Ambro amendment to afford to LIS “equal or greater protection from polluted dredged spoils [as that afforded] to open ocean waters.” It is the stated position of the Connecticut Department of Environmental Protection’s Office of Long Island Sound Programs, however, that the MPRSA has provided no additional protection to LIS and that the Sound should be deleted from the MPRSA. Others, including New York State coastal managers, do not agree.

Section 102(c) of the MPRSA requires that open water sites used for the disposal of dredged material be designated by the U.S. Environmental Protection Agency for that use and that the EPA and Corps of Engineers prepare a site management plan for each designated site. None of the four recently used LIS disposal sites have been designated by the EPA; nor have any site management plans been prepared under the MPRSA. Under Section 103(b) of the MPRSA, if no feasible disposal site has been designated, the USACE under certain circumstances can select an alternative disposal site to be used for a limited period of time, subject to the EPA’s concurrence.

- 24. The Connecticut Department of Environmental Protection has recommended repeal of Ambro Amendment.** The DEP’s Office of Long Island Sound Programs previously has recommended repeal of the Ambro Amendment of the Marine Protection, Research and Sanctuaries Act, thereby removing LIS from the requirements for dredged material management imposed by the MPRSA. The DEP OLISP has suggested that the research and other efforts to date to prepare the Environmental Impact Statement for LIS dredged material disposal be

refocused into preparation of a comprehensive LIS Dredged Material Management Plan. New York State coastal managers have expressed opposition to the DEP OLISP's recommendations regarding repeal of the Ambro Amendment; such repeal is not considered politically feasible at the present time by representatives of Connecticut's Congressional delegation.

- 25. The Environmental Impact Statement for Designating Dredged Material Disposal Sites in Long Island Sound is ongoing.** The EIS by the U.S. Environmental Protection Agency and Corps of Engineers for designating one or more LIS disposal sites under the Marine Protection, Research and Sanctuaries Act and preparing a long-term management plan for the use of each site that may be designated has not been completed. In April of 1998, the EPA and USACE entered into an agreement to begin a disposal site designation process for LIS and to develop site management and monitoring plans, recognizing that this work may or may not result in the designation of any particular site or sites. This agreement followed initiation of litigation against the USACE (*Forbes v. Corps of Engineers*) by New York State interests angered by disposal of contaminated sediment in the New London disposal site near Fishers Island. This material was dredged from the Thames River for the Seawolf submarine project.

In 2002, the EPA and USACE amended their original EIS work program to include a two-phase scope of work with phase one to address the central and western basins of LIS and phase two to address eastern LIS. The eventual outcome of this process may have a profound effect on the future maintenance dredging of all Connecticut ports and harbors. The final EIS for phase one and the EPA's final "rulemaking" for designation of any LIS disposal site or sites in central and western LIS under the MPRSA was targeted for completion in 2004. Scientific research presented to date for the EIS shows that past use of the four currently used LIS disposal sites has not resulted in significant adverse impacts on the environmental quality of LIS.

In March 2004, the EPA asserted pursuant to the Federal Coastal Zone Management Act that designation of the Western Long Island Sound and Central Long Island Sound dredged material disposal sites would be consistent with the coastal management programs of Connecticut and New York. In June 2004, the State of New York, which shares jurisdiction with Connecticut in LIS, determined that the EPA's proposed designation of dredged material disposal sites (including the CLIS site) is not consistent with New York's Coastal Management Program. (See no. 27 below.) Further, New York's coastal management agency indicated that the State will pursue legal remedies if the EPA should designate the sites over New York's objection. As a result, the EPA put the designation process on hold pending consideration of New York's concerns.

In December 2004, Connecticut's Congressional delegation urged the EPA Administrator to proceed expeditiously with designation of LIS dredged material disposal sites, including the CLIS site, and to establish a time frame for completing discussions with New York State.

In March 2005, the EPA continues to pursue discussions with both New York and Connecticut in an effort to address New York's objection to designation of LIS dredged material disposal sites. Those discussions are focusing on matters concerning preparation of a comprehensive dredged material management plan (DMMP) for LIS. New York State's coastal management agency has stated that agreements concerning preparation of such a plan are necessary for New York to remove its objections to EPA designation of LIS dredged material disposal sites. The Governors of both Connecticut and New York have requested that the Corps of Engineers

prepare the DMMP. While all parties agree on the need for the DMMP, agreements among the parties have not been reached concerning the timing and completion of the DMMP relative to designation and use of the dredged material disposal sites.

The EPA is hopeful that New York's objections to the disposal site designations can be addressed to the satisfaction of all stakeholders. As an alternative, the EPA could proceed with the designations over New York's formal State objections, with expectation of legal challenges from the State of New York and other parties, including environmental groups and Long Island counties.

- 26. The Central Long Island Sound disposal site was closed in February 2004.** In accordance with the Marine Protection, Research and Sanctuaries Act, the Central Long Island Sound Disposal site was closed on February 18, 2004 to all Federal dredging projects and private dredging projects greater than 25,000 cubic yards. The site will not be available again for use by those projects until such time as it may be designated by the Environmental Protection Agency pursuant to the MPRSA. The CLIS disposal site, about 5½ nautical miles south of East Haven, historically has been one of the most active dredged material disposal sites in New England. The site is used for Federal dredging projects in central and western LIS, including maintenance of the Federal navigation project serving the Port of New Haven. (The most recent Federal maintenance dredging of New Haven Harbor was completed just prior to closure of the CLIS disposal site.) The Connecticut Department of Environmental Protection has also determined that the CLIS disposal site must be used for disposal of the dredged material from Norwalk Harbor that is suitable for disposal in LIS. Without the availability of the CLIS disposal site, the proposed Norwalk Harbor maintenance dredging project cannot proceed at this time. Numerous private dredging projects needed to maintain water-dependent facilities in central and western LIS also depend on the availability of the CLIS. While these projects are generally under 25,000 cubic yards, some are typically approved by the DEP with the provision that their dredged material be "capped" with other dredged material to provide an additional level of environmental protection. Historically, the larger Federal dredging projects have served as the source of this "cap" material.
- 27. The State of New York is a major stakeholder.** The State of New York is a major stakeholder with respect to a number of Long Island Sound issues, including LIS dredging issues affecting maintenance of Connecticut ports and harbors and the designation of one or more dredged material disposal sites under the Marine Protection, Research and Sanctuaries Act. The Connecticut/New York boundary in LIS passes either near or through the four currently used LIS disposal sites. The Environmental Protection Agency's "Final Environmental Impact Statement for Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut and New York" and the EPA's "rulemaking" for designation of any LIS site or sites for open water disposal of dredged material under the MPRSA are Federal actions affecting New York's coastal area. As such, these proposed actions are subject to review by the State of New York for consistency with New York's Federally approved Coastal Management Program. They are also subject to review by the State of Connecticut for consistency with Connecticut's Coastal Management Program. While Connecticut has found the proposed actions consistent with its program, New York has found the EPA's proposed designations of the Western Long Island Sound and Central Long Island Sound disposal sites to be inconsistent with New York's Coastal Management Program.

The Federal Coastal Zone Management Act envisions coordination between the coastal states sharing jurisdiction in a coastal water body. During a March 2004 meeting of the Connecticut Maritime Coalition's Dredge Task Force, a Deputy Commissioner of the Connecticut Department of Environmental Protection stated there is no effective communication or working relationship between the coastal management programs of Connecticut and New York. In May 2004, Connecticut's Congressional delegation urged the Connecticut DEP to pursue with New York State a diplomatic resolution to the issues affecting the EPA's designation of dredged material disposal sites in LIS, and to work together with New York as neighbors to address issues affecting LIS.

SUMMARY OF RECOMMENDATIONS

1. **The State of Connecticut should actively encourage and facilitate timely maintenance dredging, as needed, of the Federal navigation projects in Connecticut ports and harbors. The purpose of this State involvement should be to maintain and enhance: the viability of the State's water-dependent economies; the beneficial quality of life associated with the Connecticut coast; and opportunities for public access to Long Island Sound. A specific State agency with powers and duties for this purpose and sufficient authority and resources to carry out those powers and duties should be designated by the Legislature. That agency should be considered the lead State agency for advancing and coordinating the interests of the State with regard to maintenance of Federal navigation projects.**
 - 1(a) State Coordinator of Federal Maintenance Dredging: An official of the State of Connecticut should be assigned the position of State Coordinator of Federal Maintenance Dredging. Consideration should be given to establishing this position subject to the direction and authority of the Connecticut Maritime Commission authorized by Public Act No. 04-143, amended as may be necessary to facilitate this recommendation. The lead State agency for advancing and coordinating the interests of the State with regard to maintenance of Federal navigation projects should do so at the direction of the Coordinator.
 - 1(b) Duties of the State Coordinator: The principal duty of the State Coordinator of Federal Maintenance Dredging should be to coordinate all interests of the State with regard to maintenance of Federal navigation projects. The Coordinator should be responsible for:
 - long-range planning to ensure that necessary maintenance dredging of the Federal navigation projects is performed on a timely basis in accordance with demonstrated need;
 - coordination of the interests of the Connecticut Departments of Environmental Protection, Transportation, and Economic and Community Development and the Connecticut Office of Policy and Management in the Federal maintenance dredging process;
 - coordination with the members of the State's U.S. Congressional delegation on matters concerning appropriation of Federal funds to implement maintenance dredging projects;

- coordination with municipal interests, including port authorities and harbor management commissions, pursuing Federal maintenance dredging projects;
 - cooperation, negotiation, and agreements on behalf of the State with the Federal government, including the U.S. Army Corps of Engineers, with regard to Federal maintenance dredging projects; and
 - coordination with the Office of the Governor to address and resolve any State issues affecting timely planning and completion of needed maintenance dredging projects in the public interest.
- 1(c) Coordination with State maritime policies: The State Coordinator of Federal Maintenance Dredging should coordinate Federal maintenance dredging planning with the overall maritime policies of the State. In this regard the Coordinator should regularly communicate with the Office of the Governor and the designated State agency or official responsible for coordinating and advancing State maritime policy.
- 1(d) Establishment of Priorities: The State Coordinator of Federal Maintenance Dredging, in coordination with other agencies, should develop and implement a process to annually establish the State's priorities for Federal maintenance dredging and to annually evaluate the status of each Federal navigation project in terms of dredging needs and other relevant conditions. In coordination with other agencies, the Coordinator should be responsible for establishing a schedule for completing the planning necessary to maintain each Federal navigation project.
- 1(e) State data base of dredging information: In coordination with the Connecticut Department of Environmental Protection's Office of Long Island Sound Programs, the State Coordinator of Federal Maintenance Dredging should collect, compile, and maintain the State's data base of information needed to facilitate the dredging process, including but not limited to information on costs and funding, rates of shoaling, authorized project dimensions, dredging history, sediment characteristics, economic benefits, environmental concerns, and dredged material disposal options.
- 1(f) Advisory Council: The State Coordinator of Federal Maintenance Dredging should regularly obtain the advice and assistance of an Advisory Council consisting of citizens of Connecticut knowledgeable of the needs, operations, economic impacts, environmental issues, and related matters regarding dredging and dredged material disposal in Connecticut ports and harbors and Long Island Sound. The Advisory Council should consist of members representing the Bridgeport Port Authority, Citizens Advisory Council of the Long Island Sound Study, Connecticut Harbor Management Association, Connecticut Marine Trades Association, Connecticut Maritime Coalition, New Haven Port Authority, Port of New London, and a recognized environmental organization with LIS interests. The Advisory Council should also include representatives of Connecticut's U.S. Congressional delegation.
- 1(g) Annual Report: The State Coordinator of Federal Maintenance Dredging should prepare an annual report to the Governor and Legislature on the status of maintenance of Connecticut's Federal navigation projects. This report should identify any issues affecting timely and economical maintenance dredging of Connecticut's ports and harbors requiring the attention of the Governor and/or Legislature.

2. **The Environmental Impact Statement to evaluate the possible designation by the U.S. Environmental Protection Agency of one or more open water dredged material disposal sites in Long Island Sound pursuant to the Federal Marine Protection, Research and Sanctuaries Act should be completed in the most timely manner, along with the site designation process. The process should be completed in accordance with the established two-phase scope of work with completion of phase one to address the central and western basins of LIS and then phase two to address eastern LIS. At this time, the EPA should move forward with its proposed designation of the Central Long Island Sound and Western Long Island Sound dredged material disposal sites pursuant with the findings of phase one of the EIS. (See no. 3.)**
 - 2(a) Federal funding: The U.S. Congress should appropriate the funds needed to complete the EIS and designation process according to a specific schedule and scope of work agreed to by the EPA and Corps of Engineers.
 - 2(b) Stakeholder review: All stakeholders, including the Connecticut Department of Environmental Protection, New York State Department of State, New York Department of Environmental Conservation, National Marine Fisheries Service, U.S. Fish and Wildlife Service, environmental organizations, and business interests, should be provided the opportunity for continued meaningful participation in the EIS and site designation process throughout the remainder of that process.
3. **Designation of the Central Long Island Sound and Western Long Island Sound dredged material disposal sites by the Environmental Protection Agency should proceed in coordination with preparation of a comprehensive dredged material management plan for LIS. That DMMP should be prepared by the U.S. Army Corps of Engineers in accordance with agreements among the USACE, EPA, the States of Connecticut and New York, and other stakeholders. The states of Connecticut and New York, acting through their respective coastal management and environmental protection agencies, should actively participate in the plan formulation process along with other stakeholders. When preparing the plan, it should be recognized that open water disposal of suitable [emphasis added] dredged material is a necessary and viable option. Attention should also be given to the identification of feasible alternatives to open water disposal, including but not limited to use of dredged material for structural and nonstructural fill and other beneficial applications such as beach nourishment and habitat creation. Opportunities for confined aquatic disposal and decontamination should also be evaluated.**
 - 3(a) Agreements for DMMP preparation: At this time, concurrent with designation by the EPA of the CLIS and WLIS disposal sites pursuant to phase one of the Environmental Impact Statement for designation of open water dredged material disposal sites in Long Island Sound, the two states should enter into a memorandum of agreement to prepare the DMMP and begin work on the plan, including establishment of the methodology and schedule for plan formulation. That agreement should include specific milestones for DMMP formulation to ensure significant and timely progress toward plan completion.

- 3(b) Federal funding: The U.S. Congressional delegations of New York and Connecticut should support authorization and appropriation of the funds needed to complete the DMMP according to a specific schedule and scope of work agreed to by the EPA, USACE, and States of Connecticut and New York.
4. **In coordination with preparation of a comprehensive dredged material management plan for Long Island Sound, long-range dredged material management plans should be prepared for maintenance of specific Federal navigation projects in Connecticut and New York harbors utilizing Long Island Sound dredged material disposal sites. The Department of Environmental Protection's Office of Long Island Sound Programs should identify development of the DMMPs as a priority of the agency and serve as the principal State agency responsible for their development for Connecticut ports and harbors.**
- 4(a) Partnership for DMMP preparation: Preparation of the DMMPs should be through a partnership of interested stakeholders, including Federal, State, and local agencies, business interests, and environmental organizations. Through technical and funding assistance, the State of Connecticut should be an active participant in this process as it affects Connecticut's ports and harbors. DMMPs should include specific measures needed to manage the volume of material likely to be dredged over at least a 20-year period, including material that is not suitable for open water disposal in LIS. (See no. 7 below.)
- 4(b) Priority list: A priority list for development of DMMPs for all Connecticut ports and harbors should be developed and a schedule for completion of those DMMPs should be established by the State Coordinator of Federal Maintenance Dredging, acting in coordination with the DEP OLISP. Priority attention should be given to development of a DMMP for the Port of Bridgeport.
5. **Following completion of phases one and two of the Environmental Impact Statement and site designation process for Long Island Sound dredged material disposal, stakeholders should review and evaluate the status of dredged material management in LIS for the purpose of considering any appropriate modifications of the Marine Protection, Research and Sanctuaries Act (and specifically the Ambro Amendment of that Act) as may be necessary to best balance the need for timely and economical maintenance dredging with the need to protect LIS resources and environmental quality.**
- 5(a) Stakeholder review: Stakeholders conducting the review and evaluation of the status of LIS dredged material management should include the U.S. Environmental Protection Agency, Corps of Engineers, Connecticut Department of Environmental Protection, New York State Department of State (acting as the State agency responsible for implementing New York's Coastal Management Program), New York Department of Environmental Conservation, National Marine Fisheries Service, and U.S. Fish and Wildlife Service, as well as appropriate environmental organizations and business interests.

6. **A meeting of the Long Island Sound Congressional Caucus consisting of members of the U.S. Senate and House of Representatives from the states of Connecticut and New York should be convened in the near future to hear and consider issues affecting the beneficial use and conservation of LIS. That meeting should include a presentation and discussion of dredging and dredged material management issues, including issues affecting the timely maintenance of Federal navigation projects in Connecticut and New York ports and harbors, as well as presentation and discussion of recommendations for Federal actions to improve the process.**
7. **Increased attention should be given to the identification of feasible alternatives to open water disposal of dredged material, including but not limited to use of dredged material for structural and nonstructural fill (including fill for remediation of brownfields sites) and other beneficial applications such as beach nourishment and habitat creation. Opportunities for confined aquatic disposal and decontamination should also be evaluated.**
 - 7(a) Demonstration program: The funds (\$20 million) authorized by the Federal Water Resources Development Act of 2000 for a demonstration program for use of innovative sediment treatment technologies for Long Island Sound dredged material should be appropriated by the U.S. Congress. The demonstration program should be established to address feasible alternatives to open water disposal of contaminated material that must be dredged to maintain the Port of Bridgeport. The demonstration program should be implemented through a Federal-State-local partnership, with the Corps of Engineers acting as the lead agency in coordination with the Connecticut Department of Environmental Protection and the Bridgeport Port Authority.
 - 7(b) Amendment of solid waste regulations: Connecticut statutes and regulations concerning solid waste management should be amended as necessary to facilitate the beneficial, environmentally sound use of suitable dredged material for upland applications. The Connecticut DEP should complete the process of amending those statutes and regulations in the most timely manner according to a specific schedule.
 - 7(c) Increased use of Federal hopper dredge: Consideration should be given to increased use of the Federal hopper dredge *Currituck* for maintenance of specific channels along the Connecticut coast. To facilitate increased use of the *Currituck*, opportunities and constraints for nearshore placement of appropriate dredged material should be evaluated by the DEP's Office of Long Island Sound Programs.
8. **The current approach of the Connecticut Department of Environmental Protection for implementing the Connecticut Coastal Management Program (CMP) should be re-evaluated to identify opportunities for program enhancement, including opportunities for a more active role by the DEP to advance the State's interests for maintenance of Connecticut ports and harbors.**
 - 8(a) Regulatory and non-regulatory approaches: Implementation of the CMP should be based on a combination of regulatory and non-regulatory approaches intended to advance the legislative goals and policies of the Connecticut Coastal Management Act, including policies concerning development, facilities, and uses in the coastal area as well as policies concerning protection of coastal land and water resources.

- 8(b) State planning initiatives: The Connecticut Legislature should encourage increased emphasis on non-regulatory approaches by the DEP's Office of Long Island Sound Programs to implement the CMP, including sponsorship of and participation in State planning initiatives to address and resolve coastal management issues, including dredging and dredged material disposal issues, heretofore addressed primarily through DEP OLISP regulatory decisions, including "Federal consistency" decisions. The Legislature should support the operating budget requirements of the DEP OLISP for increased sponsorship and participation in coastal planning initiatives.
9. **All stakeholders concerned with Long Island Sound dredged material management, including governmental agencies, environmental organizations, and business interests, should recognize and respect each others' objectives as important and legitimate, and work together as partners to resolve the current issues in an objective, balanced, and practical manner.**
10. **The States of Connecticut and New York should recognize their responsibility to work together as neighbors to address Long Island Sound-wide issues through coordinated and effective planning and coastal management initiatives. The coastal management agencies of the two states should coordinate initiatives to address and resolve issues concerning not only dredging and dredged material management, but also placement of energy transmission and distribution facilities, and other issues of LIS-wide significance.**

A previous edition of this report was presented by Mr. Steadman at the national conference "Coastal Zone 03" in Baltimore, Maryland, July 2003. For additional information concerning the CHMA dredging study or to discuss or comment on the study, contact Geoffrey Steadman at (203) 226-9383 or geoffreysteadman@att.net or John Roberge at (203) 377-0663 or jcr@racellc.com.



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
441 G Street N.W.
WASHINGTON, D.C. 20314-1000

MAR 17 2005

REPLY TO
ATTENTION OF:

North Atlantic Division
Regional Integration Team

Honorable M. Jodi Rell
Governor of Connecticut
State Capitol
210 Capitol Avenue
Hartford, CT 06106

Dear Governor Rell:

A handwritten signature, likely of a representative of the U.S. Army Corps of Engineers, is written over the typed name "Dear Governor Rell:". The signature is in cursive and appears to be "Sir" or similar.

I am responding to your letter of February 8, 2005, to Lieutenant General Carl A. Strock in which you and Governor Pataki of New York requested that the Corps of Engineers participate in the development of a Dredged Material Management Plan (DMMP) for the Long Island Sound (LIS) Region.

As you are aware, the Corps of Engineers has numerous navigation projects in both Connecticut and New York that require periodic maintenance dredging to insure that they meet the navigational needs of shippers and local fishermen. As part of that maintenance, sound management of dredged material is a priority mission of the Corps. This includes evaluating opportunities for cost-effective and environmentally acceptable placement of dredged material. It is our policy that all Federally maintained navigation projects must demonstrate, through the preparation of a DMMP, that there is sufficient dredged material disposal capacity for a minimum of 20 years.

Representatives of the Corps North Atlantic Division (NAD) office and both our New England and New York District offices have been meeting with representatives of the Connecticut Department of Environmental Protection and the New York Department of State to discuss the possibility of working together on a LIS DMMP, an effort that I support.

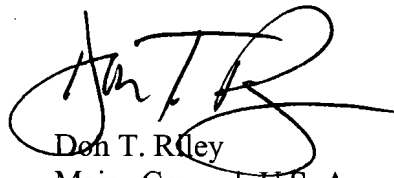
Some of the activities that you reference in your letter for inclusion in a LIS DMMP, such as evaluations of reducing sediment sources and reduction of contaminant loading, are beyond the typical scope that can be funded by the Corps in a LIS DMMP. However, our District representatives have indicated your intent to provide the additional funding needed to include these efforts in a regional DMMP. That proposal can be addressed as our respective offices develop the final scope of work.

I have instructed my staff at NAD to evaluate opportunities to reprogram funds to initiate activities on developing a scope for a LIS DMMP and to develop a Project Management Plan (PMP) that will identify the project scope, costs, and timeline, as well as the financial responsibilities of the various project partners. The President's fiscal year 2006 budget does not contain funds for the development of a LIS DMMP, but we will evaluate opportunities for funding in FY 2006 and future budget requests. When the PMP is developed for a LIS DMMP project we will provide copies to both of your offices as well as the appropriate State agencies for their review.

We look forward to working with you to address the continuing navigation needs of the Long Island Sound. If you have any specific questions or concerns, please have your staff contact Mr. Joe Vietri, Chief, Planning and Policy, in our North Atlantic Division office at (718) 765-7070.

*Thank you for
your support!*

Sincerely,

A handwritten signature in black ink, appearing to read "Don T. Riley", written over a circular stamp or seal.

Don T. Riley
Major General, U.S. Army
Director of Civil Works



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
441 G Street N.W.
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

MAR 17 2005

North Atlantic Division
Regional Integration Team

Honorable George E. Pataki
Governor of New York
State Capitol
Albany, NY 12224

Dear Governor Pataki:

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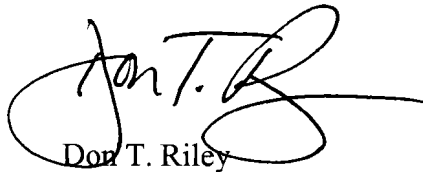
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*Thank you
for your
support!*

Sincerely,



Don T. Riley
Major General, U.S. Army
Director of Civil Works

MEMORANDUM FOR RECORD

22 February 2005

SUBJECT: 11 January 2005 LIS DMMP Meeting with representatives of the New York Department of State (NYDOS), Connecticut Department of Environmental Protection (CTDEP), U.S. Environmental Protection Agency (EPA), and U.S. Army Corp of Engineers (Corps) to Discuss Development of a Comprehensive Dredged Material Management Plan for Long Island Sound

Introduction

1. On 11 January 2005 a Project Delivery Team (PDT) meeting was held at the CTDEP Fisheries Lab in Old Lyme, Connecticut with representatives of the NYDOS, CTDEP, EPA & Corps. The purpose of the PDT meeting was to follow-up discussions from the project Steering Committee (SC) meeting held the previous day and to discuss and identify a conceptual outline and preliminary budget for the development of a Dredged Material Management Plan (DMMP) for Long Island Sound (LIS). After introductions by the participants (a list of participants is included as attachment 1), the group was provided and reviewed the Mission Statement and project objectives that were developed the preceding day by the SC.

Review of Mission Statement & Project Objectives

2. Mr. Pabst (EPA) indicated that it was his understanding that in the second sentence of the Mission Statement that the CT representatives on the SC wanted to include the phrase “the need for” related to open water disposal. The revised portion of the second sentence would read ... “reducing or eliminating *the need for* open water disposal of dredged material in Long Island Sound.” Mr. Capobianco (NYDOS) objected to the inclusion of the phrase in the Mission Statement, indicating that the phrase is not in the “joint Governors letters”. Since neither CT nor NY SC members were present at the PDT meeting, the group agreed that they would “italicize” the portions of the Mission Statement or Objectives that they felt needed to be further discussed or clarified by the SC. The annotated Mission Statement and Objectives is included as attachment 2.
3. Mr. Pabst (EPA) requested that the objective #2 be amended to not only identify but to “characterize” the major sources and quantities of dredge material that will require management. The group was concerned that this would be interpreted as requiring extensive testing that could be extremely expensive considering the number of harbors under consideration. Mr. Kieman (NYDOS) suggested that adding the word “assess” would allow the use of historic information and other means and could provide flexibility on the level of characterization needed.
4. Mr. Capobianco (NYDOS) objected to the phrase “cost effectiveness” in Objective #3. He was concerned that this would limit the alternative formulation to less expensive options and that the “environmental benefit” features of options should be of more importance. Mr. Capobianco and Mr. Kieman (NYDOS) objected to the language of objective #4. They indicated that they did not want to see “in-water disposal” options raised or characterized as the same level as other alternatives such as beneficial re-use. Mr. Vietri (Corps) indicated that under Corps formulation activities, one doesn’t limit the identification of any viable alternative. The alternatives that are included in recommendations are based on the result of various evaluations and analyses. Ms. Monte (Corps) indicated that she would provide PDT members with further information regarding the Corps formulation methodology.
5. The group discusses objective #11 that was provided by David Kaiser (NOAA) based on the SC discussion of the previous day. Mr. Kieman (NYDOS) indicated that he felt that objective #11

was really a goal. Although both states agreed to develop a listing of “immediate needs” within a 2-3 week time period, Mr. Kieman requested the entire #11 objective be italicized for further review and discussion of the SC.

6. Discussion of Objective #2 was revisited. Mr. Pabst (EPA) indicated that if the project goal was to eliminate open water disposal, then determining the quality of the material wasn't that important since it would be going to upland disposal. Both George Wisker (CTPEP) and Diane Duva (CTDEP) indicated that quality was an important consideration in identifying disposal options since the quality of characteristics of the dredged material could restrict upland disposal or beneficial use options. Depending on the type of effort undertaken to determine the quality of the dredged material, this phase of the DMMP could take millions in funds and multiple years of effort. Mr. Pabst indicated that the DMMP should examine the disposal options and not try and focus on upland disposal. Mr. Keegan (Corps) indicated that all disposal options should be considered. The options available for suitable and unsuitable material are different. The DMMP should identify a base plan, based on the Federal regulations, that deals with both the suitable and unsuitable material. If the base plan identifies material suitable for ocean disposal, it doesn't mean that a recommended plan couldn't identify a different management option. However, someone would need to come to the table to pay for the differences in cost for implementing the recommended plan. If not, you revert back to the base plan for material management. He indicated that using historic information probably could be used as a method of determining volumes of suitable/unsuitable material for DMMP purposes.
7. Mr. Kieman (NYDOS) indicated that NY believed tracking down the source of contaminants to the dredged material could provide both an economic and environmental benefit toward re-use of the material and a cost reduction in disposal management. Mr. Keegan (Corps) informed the group that tracking and identifying sources of sediment and contamination is beyond existing Corps authority and is considered a State responsibility. Efforts in this area could only be included if Congress granted additional authority to the Corps specifically for this or if the States provided funds to fully pay for this investigation. Mr. Kieman concurred that this effort would be a State responsibility. After additional discussion regarding efforts of tracking sources of contaminant to dredged material, the PDT was still divided on whether this effort should be included in DMMP efforts. SC will need to provide direction.

Communication Strategy

8. The PDT discussed the importance of developing a public outreach and communication strategy. The group agreed that we needed to encourage all levels of participation from the general public, Ports & marine trades, chambers of commerce, State & local governments, affected users, etc. Mr. Cote (EPA) indicated that Region 1 had submitted an application for \$100,000 in FY05 EPA funding as part of the Long Island Sound Study. He indicated if these funds were received they could be used to hold public meetings/workshops to build a stakeholders group to participate in the DMMP project.
9. Mr. Vietri (Corps) suggested that the group develop a “talking point” paper to present the scope and cost of any agreed effort. He indicated that we should try and identify 6 “bullets” that provides a synopsis of the project. The PDT agreed that there needed to be a consistent message presented on the project to both Federal and State inquiries from legislators and that a single “talking point” paper was the most effective method to accomplish this. Mr. Keegan (Corps) reminded the members that the project would not only require Federal funds, but likely State funds as well. The PDT needed to identify the amount of funding the project might require from all sources and include this in the “talking point” paper. Ms. Pechko (EPA) suggested that the

team needed to include an “educational component” in both the “talking point” paper and in meetings with the public. Ms. Monte (Corps) suggested the development of this “talking point” paper should be tasked to a separate group and volunteered to develop a “talking point” paper and a fact sheet for PDT & SC review.

DMMP Process Overview

10. Ms. Monte (Corps) briefed the PDT members on the Corps DMMP process. She indicated that the first activity is usually to develop a Preliminary Assessment that identifies why a DMMP should be prepared. Likely sufficient information currently is available that will allow for the preparation of a PA now. Mr. Vietri (Corps) indicated that before efforts on developing the PA could be initiated, the Corps needed to receive the letters from the Governors. He felt that results of the PA indicating that there was a need for the DMMP would send a powerful message to Federal and State legislators. Mr. Capobianco (NYDOT) questioned whether the PA dealt with just Federal projects or did it include non-Federal projects. If non-Federal projects weren't included he questioned how they could be included. Mr. Keegan (Corps) indicated that the PA only needed to deal with the Federal projects. The PA examines historic information such as material volumes, disposal options used and whether there is sufficient information to determine material management for the next 20 years. The PA doesn't need to be a large document, just identify that there is a need for additional information and analysis which would result in the recommendation to pursue a DMMP. He indicated that based on the information that they collected as part of the LIS Designation EIS and information on the Federal projects they could justify the need for a DMMP. It is in the DMMP, not the PA that you would start considering non-Federal issues as well. New England District would take the lead for preparing the PA once the Governors letters were received. It is estimated that the PA could be completed within 30 days.
11. Ms. Monte (Corps) indicated that once approval and funds for a DMMP are received, the PDT must develop a Project Management Plan that includes a detailed project scope, a project budget, identification of methodology of analysis to be pursued, degree of engineering detail, environmental uncertainty, degree of risk, etc. Mr. Keegan (Corps) indicated that current Corps regulations indicate that the Corps should assess management of Federal material. The DMMP can and should include an analysis of non-Federal management as well. However, a sponsor must provide funds for the non-Federal portion of the effort. In discussions with the SC, state representatives indicated that they would also like to see the project include efforts to identify sources of contamination and sediment reduction. Mr. Keegan indicated that currently the Corps does not have the authority to pursue these investigations and unless there was a specific authorization to do so, they too would need to be funded by non-Federal sources.
12. Ms. Monte(Corps) informed the group that the DMMP would outline the projects, their authorizations and history, alternatives considered and would identify a “base plan”. The DMMP could also identify a “recommended plan” if it varied from the base plan. The recommended plan would be compared to the Base plan, actions that were needed for the recommended plan to move forward as the selected plan, a timeframe for those actions to occur, results of coordination with local and state officials and would include NEPA documentation.

LIS Designation EIS Project Overview

13. Mr. Habel (Corps) provided the group an overview of the LIS Designation EIS (LIS DEIS) project. He indicated that they had extensive public outreach program that included public meetings, workshops, working group meetings and hearings. He indicated that the participation

from the marine trades was high but other stakeholders weren't as active. He also indicated that participation in the meeting/workshops was higher when they were held in Connecticut.

14. The LIS DEIS project team conducted a dredging needs survey in which they send out questionnaires and contacted navigation facilities in both Connecticut and New York. The purpose of the survey was to have the marinas/harbormasters estimate their immediate dredging needs both for maintenance and improvement (expansion) activities as well as project future dredging needs and the expect timeframe for that action. Mr. Habel indicated that the response rate was approximately 35%. He indicated that if the survey was revisited and additional information collected, that the State needed to participate to help improve the response rate.
15. Mr. Habel indicated that the purpose of the LIS DEIS was determine if their was a need for an open water disposal (OWD) site and if that need existed to attempt to identify the location of the OWD site(s) to meet the need. He indicated that the LIS DEIS contained an appendix that evaluated potential alternatives to open water disposal sites but that the PDT may want to revisit that since they examined "regional opportunities" and small sites were all that were identified. The use of small sites could be useful in site-specific DMMP evaluations.
16. For the LID EIS a dredging needs survey was conducted of navigational interests in both NY and CT. Mr. Habel indicated that the return rate for the survey was approximately 33%. The results of the survey were used to determine potential quantities of material that needed disposal and displayed a slide that showed the various volumes from the different NY/CT harbors. The slide indicated the majority of the material considered was originating in CT harbors, with limited material coming from NY harbors. The PDT questioned the quantity of material from Long Island sources since there are a significant number of Federal Harbors that receive periodic maintenance. Ms. Monte (Corps) indicated that she would develop a listing of all Federal harbors on Long Island that identifies the last time dredging occurred and projected an estimate of dredging quantities for the next 20 years.
17. The PDT discussed the Zone of Siting Feasibility (ZSF) that should be used for the LIS DMMP. Mr. Houston (Corps) indicated that the eastern boundary of the NY/NJ DMMP was 25 miles from the Statue of Liberty into Little Neck Bay, Hempstead. Mr. Keegan (Corps) indicated that the Rhode Island Disposal Site Designation EIS western boundary was the RI/CT border. The PDT agreed that the western end of the LIS DMMP did not have to extend west of Throgg's Neck Bridge the eastern end would be the CT/RI border.
18. The PDT attempted to identify a framework of activities and projected costs related to developing a DMMP for LIS. They agreed that they would use information that was available from other efforts and would identify areas where it appeared additional information or efforts were needed. The group agreed to list the "major" activities initially and then focus on each activity to expand the detail and attempt to quantify effort and cost. The major identified activities were:

- | | |
|---------------------------|------------------------------------|
| - Public Involvement | - Environmental Studies |
| - Fish & Wildlife Studies | - Hydrology & Hydraulic Studies |
| - Geotechnical Studies | - Design Studies |
| - Real Estate | - Project Management |
| - Plan Formulation | - Innovative Technologies |
| - Economic Analysis | - Contaminated Material Track Down |
| - Cultural Studies | - Beneficial Use |

19. The PDT discussed each activity individually and identified sub-activities or requirements to be included in the LIS DMMP. In many cases the sub activities were based on the activities pursued under the NY/NJ DMMP and what had been conducted under the LIS Designation EIS. The group discussed possible costs to perform the activities. Most of the costs are very general and based on gross assumptions at this time. The listing of the detailed activities with estimated costs is included as Attachment 3.
20. After identifying the activities and developing a preliminary cost estimate for LIS DMMP activities, the initial project cost was \$16 million. This figure did not include any activities that were related to contaminant track down or sediment reduction. The PDT discussed two possible funding streams for the project. Both streams assumed that the initial funding year was in FY 2007. The following funding streams were identified (cost in \$ million):

Seven Year Project	Five Year Project
FY 07 - \$0.8	FY 07 - \$1.6
FY 08 - \$3.2	FY 08 - \$5.6
FY 09 - \$4.0	FY 09 - \$4.0
FY 10 - \$3.2	FY 10 - \$3.2
FY 11 - \$2.4	FY 11 - \$1.6
FY 12 - \$1.6	
FY 13 - \$0.8	

21. The PDT discussed possible sources of funding that could be used to initiate project efforts. Mr. Cote (EPA) distributed information on an application that EPA submitted to the LIS Program/EPA National Estuary Program for a \$100,000 grant for FY 05. He indicated that the Management Committee would be reviewing the grant applications in late January/early February. Mr. Capobianco (NYDOS) indicated that NY State has the potential for funds from an Environmental Protection Program. These funds could be used for public outreach. He indicated that the State would need to identify a priority area for funding and that the funding application would need to be submitted by June.
22. The PDT discussed what activities might be accomplished in the initial funding year if funding is received from EPA via the LIS Program and if reprogramming efforts could identify Corps funding. The group agreed that the first priorities was the development of a Project Management Plan, initiation of the public involvement plan (having at least one workshop) and a literature search to determine what existing information was available.

Next Steps/ Action Items

The PDT identified the immediate (30-60 day) action items & the Short-Term (61 day to initial funding) actions that need to occur.

Immediate Actions

1. Develop a talking points paper and a fact sheet and distribute to PDT members (Monte – Corps)
2. Get Governors letters finalized and submitted to the Corps (CT & NY SC members)
3. Finalize Mission Statement & Objectives (Steering Committee)

4. Develop listing of immediate dredging needs and submit to the Corps (Capobianco – NYDOS, Wisker – CTDEP).
5. Provide MFR of PDT meeting with preliminary schedule and budget to Steering Committee for discussion at next meeting (Keegan – Corps)
6. Arrange Logistics for SC meeting (14 March) and additional PDT meeting (assume 15 March) in Springfield, MA and distribute to SC & PDT Members (Cote/Brochi – EPA)

Short Term Actions

7. Develop a listing of NY Federal harbors showing last dredging activity and projected future dredged material volumes for 20-year period. (Monte – Corps)
8. Once Governors Letters Received reprogram funds to develop Preliminary Assessment (Monte – Corps)
9. Once funding received develop Preliminary Assessment (Keegan/Habel – Corps)
10. Bi-State Strategy to address immediate dredging needs (SC members)
11. State/Congressional Coordination efforts (NY & CT)

Michael Keegan
Corps Project Manager

Attachments

1. Attendance List
2. PDT annotated Mission Statement and Objectives
3. Breakdown of LIS DMMP Activities & Cost

Copy Furnished: All meeting attendees

Attachment 1
List of participants at the 11 January 2005 LIS DMMP PDT meeting in Old Lyme, CT

Name	Agency	Phone Number	Email Address
Greg Capobianco	NYDOS	518-474-8811	gcapobia@dos.state.ny.us
Shawn Kiernan	NYDOS	518-473-3656	skiernan@dos.state.ny.us
George Wisker	CT DEP/OLISP	860-424-3034	george.wisker@po.state.ct.us
Paul Stacey	CTDEP	860-424-3728	paul.stacey@po.state.ct.us
Diane Duva	CTDEP	860-424-3271	diane.duva@po.state.ct.us
Mel Cote	EPA Region 1	617-918-1553	cote.mel@epa.gov
Jeannie Brochi	EPA Region 1	617-918-1536	brochi.jean@epa.gov
Patricia Pechko	EPA Region 2	212-637-3796	pechko.patricia@epa.gov.
Doug Pabst	EPA Region 2	212-637-3797	pabst.douglas@epa.gov
Mark Habel	Corps, New England Dist	978-318-8871	mark.l.habel@usace.army.mil
Mike Keegan	Corps, New England Dist	978-318-8087	michael.f.keegan@usace.army.mil
Linda Monte	Corps, North Atlantic Div	718-765-7067	linda.b.monte@usace.army.mil
Joe Vietri*	Corps, North Atlantic Div	718-765-7070	joseph.r.vietri@usace.army.mil
Darin Damiani	Corps, New York District	212-264-4549	darin.r.damiani@usace.army.mil
Deborah Swacker	Corps, New York District	212-264-1605	deborah.b.swacker@usace.army.mil
Frank Santomauro	Corps, New York District	212-264-0223	frank.santomauro@usace.army.mil
Len Houston	Corps, New York District	212-264-2122	leonard.houston@usace.army.mil

* participated in the morning portion of the meeting

Attachment 2
LIS DMMP
Mission Statement & Objectives
Italicized to Highlight PDT Additions or Questions

MISSION STATEMENT

To develop a comprehensive plan for dredged material management in Long Island Sound using a broad based public process that protects the environment based on best scientific data and analysis while meeting society's need for safe and economically viable navigation for water based commerce, transportation, national security, and other public uses. This dredged material plan will include, but not be limited to reducing sediment sources and contaminant loading, and developing feasible beneficial re-uses for dredged material *with the goal of reducing or eliminating the need for open water disposal of dredged material in Long Island Sound.*

PROPOSED GOALS & OBJECTIVES

1. Ensure, through an open and inclusive process, the involvement of concerned citizens and affected users throughout the region to collectively initiate a process for developing the dredged material management plan for Long Island Sound.
2. To identify *and characterize (assess)* the major sources and quantities of dredge material that will require management over a 20 year planning horizon.
3. To determine feasible modifications and enhancements to current management practices that further reduce sediment and contaminant loading of dredged areas and to assign highest priority to actions that maximize environmental benefit and *cost effectiveness*.
4. *To thoroughly identify and assess all feasible disposal options, including but not limited to, dredged sediment treatment technologies, beneficial uses for dredged material, and in-water sediment disposal methodologies. (formulation methodology example Corps)*
5. Identify a comprehensive and coordinated regional strategy for feasible and environmentally sound management of material dredged from Long Island Sound.
6. Develop alternative management strategies for treating or re-using contaminated dredged materials, including the use of decontamination and sediment processing technologies.
7. Thoroughly assess and recommend alternative locations for the treatment and beneficial reuse of dredged material.
8. Undertake a cost-benefit analysis of the impacts of all sediment management options proposed on the future maintenance dredging of federal and non-federal projects in LIS harbors and navigation channels.
9. To define dredging and disposal evaluation, management, and monitoring protocols and review criteria and identify constraints to implementation of changes.
10. To clarify and articulate the specific statutory, policy, and management responsibilities of all federal, state, and local agencies and other public and private stakeholders for the implementation of dredged sediment management in LIS.

11. *To accommodate dredging that needs to occur during the planning and development of the DMMP, the States of New York and Connecticut will identify immediate and short term dredging needs for Long Island Sound. Following the LIS EIS site designation process, the objective for dredged material management for the identified immediate and short term needs will be to reduce sediment sources and contaminant loading, and develop feasible beneficial re-uses for dredged material in order to reduce or eliminate open water disposal of dredged material. If constraints to meeting this objective cannot be removed in a reasonable time period and manner, the current dredged material management protocol will be used.*
12. To develop a protocol for determining the need for DMMP modification or revision, and a process for implementing required modifications or revisions.

Attachment 3
Breakdown of LIS DMMP Activities & Cost

Public Involvement Sub-activities (\$1 million)

1. Meetings
 - working group
 - public outreach
 - informational
 - public hearings
2. Newsletter
3. Mailing list
4. Presentation Preparation – Fact sheets
5. Website development
6. Scoping sessions

Assumptions: The group estimated the cost by breaking the project area into 9 coastal counties (4 in NY & 5 in CT). based on the sub activities identified, the PDT estimated the cost to be approximately \$100,000 per county.

Environmental Studies Sub-activities (\$2 million)

1. **Aquatic** - Block Island to Throggs Neck Bridge

Sediment – literature, GIS, gap identification, some sampling \$100K

Benthic – Update data and gap identification \$400K for BFS

Finfish – Update data and gap identification

Shellfish/Lobster – Update data and gap identification

Background Contaminant – Available, compile data \$100K

Oceanographic Studies – Available, compile data \$100K

Water Quality – Available, compile data \$100K

Near bottom modeling – data collection, literature, modeling methods \$300K

Assumptions: The PDT assumed that the initial effort would be comprised of a literature search as a method for initial screening as to determine the scope and extent of any field investigations. The estimated the cost of the aquatic effort required based on the costs of similar investigations as part of the LIS Designation EIS. It was also assumed that for the eastern section of LIS collection of PhysO and near bottom modeling needed to be performed. It is assumed that finfish, lobster and shellfish data already collected is sufficient for DMMP. It is also assumed that NY DEC has similar information available for NY areas. If evaluating CAD cells, there is sufficient information on CT side regarding bottom type/uses but information on NY side is sparse.

2. **Terrestrial** – Upland 50 mile radius for upland placement & reuse

Perform General Site Evaluation

Inventory and screening of sites using GIS

Assumptions: The PDT assumed that specific physical and chemical analysis of the sites that survive initial screening may be required to determine compatibility to receive dredge material.

Plan Formulation (\$7 million)

Alternatives to be Considered:

Beneficial Use of Dredged Material

- Brownfield Remediation/Redevelopment (CT Inventory exists but not in GIS format & capacity unknown)
- Beach Nourishment
- Wetland Creation
- Land Fill remediation – capping and remediation
- Mine/Quarry Reclamation
- Habitat Restoration (Bird Nesting Island)
- Construction Aggregate
- Artificial Reef
- Port Revitalization and Development (Bulkheading)
- Hot spot (contaminated site) remediation

Containment Facilities

- Confined Aquatic Disposal Sites – Existing and new Pits, Field land, Dead end basins
- Containment Islands
- Upland Containment Disposal Facilities
- Temporary Containment Sites (in-water & upland)
- Landfills

Open Water Disposal Sites

Innovative Technologies

- Thermal (Kilns)
 - aggregate for thermal melt
 - aggregate
- Soil Washing
- Solidification/Stabilization
- Manufactured Soil

Transfer Facilities

Contaminant & Sediment Reduction (State management & responsibility)

Contaminant track down
Source Reduction (upland)
BMPs (upland)

Project modifications (channel realignment, settling basins, etc)

Improvement in Dredging Techniques

Project Sequencing (dredging private/Fed for savings & potential source for innovative tech input)

Assumptions: The PDT assumed that economic analysis activities and hydrologic/hydraulic would be included in the cost identified for plan formulation. The cost for plan formulation does not include activities related to contaminant track-down or sediment reduction. Those activities are a considered a State responsibility to fund.

Design & Cost Estimate Activities - \$500,000

Assumptions: Design & cost estimate activities would be performed on alternatives that remained after initial screening.

Real Estate Activities - \$200,000

Cultural Studies - \$300,000

Assumptions: Cultural studies have been performed for aquatic location, additional cultural studies would be limited to terrestrial locations

Project Management - \$1.7 million

Assumptions: Project Management would be 15% of project subtotal

Project Contingency - \$3.2 million

Assumptions: Project Contingency would be 25% of project subtotal

Total Estimated Cost of LIS DMMP - \$16 million*

* Does not include activities related to contaminant track-down or sediment reduction.



NEW YORK



CONNECTICUT

February 8, 2005

Lieutenant General Carl A. Strock
Chief of Engineers/Commanding General
U. S. Army Corps of Engineers
441 G St., NW
Washington, DC 20314

Dear General Strock:

We request the U.S. Army Corps of Engineers (Corps) North Atlantic Division Office to develop a Dredged Material Management Plan (DMMP) for the Long Island Sound (LIS) region. Considering the responsibilities of your agency for maintaining major channels and waterways in LIS, as well as your regulatory responsibilities to protect the environmental well being of our waterways under the Clean Water Act, the Corps is uniquely suited to take the lead in the DMMP process. A committee comprised of representatives from the Corps, EPA, New York and Connecticut would manage the effort.

Dredging and appropriate management of dredged sediment is vital to the economic and environmental well-being of both New York and Connecticut. However, as you are aware, dredged material management for LIS dredging projects has been a particularly significant issue and concerns have been raised recently over the proposed EPA designation of open water disposal sites in central and western LIS. To resolve these issues for the long term, we believe the interests of all stakeholders are best served by development of a comprehensive DMMP that would identify feasible and environmentally sound alternatives and establish future protocols for dredged material management. These alternatives include, but are not limited to, reducing sediment sources, reducing contaminant loading, and developing feasible beneficial reuses for dredged material, with the goal of reducing or eliminating the need for open water disposal.

Our respective staffs are prepared to begin immediate discussions regarding the scope and extent of effort necessary to prepare such a plan. We stand ready to seek the support of the New York and Connecticut congressional delegations to assist in providing funding sufficient to complete the development of this plan.

Additionally, we urge the Corps to include funds to undertake a DMMP in your budget request. The States will work with our respective Congressional delegations to support the appropriation.

We are committed to a regional DMMP that will promulgate feasible sediment management options for LIS and request the Corps to immediately begin preparation of the DMMP.

Sincerely,



George E. Pataki
Governor



M. Jodi Rell
Governor

c: Brigadier General Merdith W. B. Temple - Division Commander, North Atlantic Division
Colonel Thomas Koenig, District Engineer - New England District
Colonel Richard J. Polo, Jr., District Engineer - New York District

DRAFT MEETING SUMMARY – December 20, 2004

Meeting Between the New York Department of State (NYDOS), Connecticut Department of Environmental Protection (CTDEP), U.S. Environmental Protection Agency (EPA), U.S. Army Corp of Engineers (Corps)

**Facilitated by the National Oceanic and Atmospheric Administration (NOAA)
(NOAA's Office of Ocean and Coastal Resource Management (OCRM)
and Office of General Counsel for Ocean Services (GCOS))**

**December 8, 2004 - 12:30 to 3:00
NYDOS Offices - 41 State Street - 9th Floor - Albany, New York**

**Potential for Development of a Comprehensive Dredged Material Management Plan for
Long Island Sound – Second Round of Discussions**

INTRODUCTION AND OPENING REMARKS

1. OCRM (Kaiser) opened the meeting by thanking everyone for attending and stating the purpose of the meeting was to continue discussions on the possibility of developing a Dredged Material Management Plan (DMMP) for Long Island Sound (LIS). OCRM (Kaiser) went over the agenda for the meeting which included updating the NEXT STEPS/ACTION ITEMS from the September 2, 2004, meeting summary; discussing the process for advancing the development of a DMMP as described in the MEETING AGENDA; and discussing the next steps in the LIS DMMP development process.
2. OCRM (Kaiser) invited opening remarks from any of the participants. CTDEP (Evans) appreciated being brought into this discussion and hope to participate in working toward a LIS DMMP and the designation of disposal sites. EPA (Murphy) stated that EPA is glad that representatives from the State of Connecticut are participating in this meeting and EPA is interested in discussing next steps in developing the LIS DMMP and working toward an idea of what the LIS DMMP will look like. Corps (Piken) said it brought representative from various Corps' districts and regions to listen to the other parties in determining how to move forward in developing a LIS DMMP. Corps (Piken) also noted that everyone should focus on how to establish a LIS DMMP quickly while also doing so in a manner that will provide the most benefit to the regions involved.

DISCUSSION OF NEXT STEPS/ACTION ITEMS FROM THE SEPTEMBER 2, 2004, MEETING

Next Steps/Action Item #1 – *OCRM agreed to facilitate distribution of information provided by EPA, Corps, and NYDOS in addressing the discussion points and questions from the agenda.*

3. OCRM (Kaiser) stated that participants were to submit to OCRM a draft response to the discussion points and questions from the previous meeting concerning the time frame, process, costs, scope, and commitments of an LIS DMMP. No draft responses have been submitted but we will continue to talk about these discussion points in this meeting.

Next Steps/Action Item #2 – *EPA to draft and submit to OCRM a preliminary CZMA proposal for a revised designation plan with no commitments at this time.*

4. OCRM (Kaiser) said EPA has begun drafting a proposal to move forward with a designation plan. EPA (Murphy) summarized that at the last meeting EPA floated an idea of how to continue dredging

during the DMMP development process but EPA feels it is premature to move ahead with this proposal until the DMMP process is further along. EPA (Stein) added that the general idea of EPA's proposal is to provide a sunset provision for the designation of disposal sites where the designated sites would expire after two years if the DMMP was not developed and eight years if the DMMP was developed. OCRM (Kaiser) noted that EPA can provide this proposal at the appropriate time as we move forward in the DMMP process.

Next Steps/Action Item #3 - *NYDOS to continue discussions with Connecticut including a discussion of their immediate dredging needs.*

5. OCRM (Kaiser) said that New York and Connecticut are working on a joint letter from their Governors requesting the Corps to initiate the process for developing an LIS DMMP.
6. NYDOS (Stafford) said that New York and Connecticut have been working together on the joint letter and the letter will soon be reviewed by the New York Governor's office which may result in some minor changes to the letter.
7. CTDEP (Evans and Wisker) said that Connecticut is not as far along as New York in clearing the joint letter but the CTDEP is currently reviewing the letter and also noted that they have a new Commissioner who will need to be brought up to speed on this issue.
8. Corps (Vietri) asked who at the Corps the joint letter would be addressed to and what it would say. NYDOS (Stafford) responded that the joint letter would be addressed to General Sprock [spelling?]. NYDOS (Stafford) summarized that the joint letter would express the Governor's support for a LIS DMMP and ask the Corps to initiate, and appropriate funds for, the DMMP process. Corps (Piken) mentioned that the joint letter from the states should also be copied to Brigadier General Temple.
9. OCRM (Kaiser) asked the Corps whether they need anything in addition to the joint letter in order to initiate the DMMP process. Corps (Piken and Vietri) responded that the Corps does not need anything else to initiate the DMMP process.
10. EPA (Brochi) asked if there was a time frame for getting the joint letter sent out. NYDOS (Stafford) and CTDEP (Evans) both stated that the joint letter is a high priority.
11. Corps (Vietri) said that the Corps may have some discretionary funds to start the DMMP process and there is a firm commitment from the Corps in starting this process. Corps (Vietri) said that there needs to be a strong commitment from all the parties represented at the meeting and each agency should identify the key players to be involved in the process. Corps (Vietri) also noted that the Corps needs might differ from the needs of the states so the states need to be involved in the process because this is a DMMP for the region. Corps (Vietri) said that it is premature at this time to know for sure but the Corps may need a financial commitment by the states in developing the DMMP. This is premature because all parties need to first agree on the general scope of the DMMP.

Next Steps/Action Item #4 - *Corps to provide NYDOS with an analysis of the short term dredging projects in LIS.*

12. OCRM (Kaiser) noted that the Corps has been working on this item. Corps (Habel) said that the

Corps has provided some draft analysis of short term dredging projects to NYDOS. Corps (Scully) said it is building on the data included in the DEIS.

Next Steps/Action Item #5 - *All parties to explore options for start up money to fund a LIS DMMP and submit findings to OCRM.*

13. OCRM (Kaiser) said this involves the funding issue that we will discuss later in the meeting.

Next Steps/Action Items #6 - *All parties to provide more detail on the objectives and requirements from the NYDOS Initial Expectations for a LIS DMMP and submit to OCRM.*

14. OCRM (Kaiser) said that as part of the previous meeting NYDOS had provided the objectives and requirements listed in the NEXT STEPS/ACTION ITEMS from the Meeting Summary of October 13, 2004. All parties need to review and provide more detail on these objectives and requirements. The general objectives that will be described in the joint letter from the New York and Connecticut Governors needs to be included in these objectives.

Next Steps/Action Item #7 - *OCRМ to provide a description of the CZMA consistency process that allows for federal agencies and states to agree to a flexible consistency time frame.*

15. OCRM (Kaiser) summarized that at the previous meeting we discussed how New York objected to the site designation and how there is some flexibility in the CZMA consistency process to allow the LIS DMMP process to move forward. One option is for New York to withdraw or set aside its objection and according to NOAA regulations New York and Connecticut could get a supplemental review of whatever action EPA takes in moving forward on the site designation. Or, New York could withdraw its objection based on EPA's proposal without further consistency review. We do not know what the process will be at this time.

Next Steps/Action Item #8 - *NYDOS will continue discussions with Connecticut on Connecticut's participation in the development of an LIS DMMP.*

16. OCRM (Kaiser) said that we have already discussed and completed this item.

Next Steps/Action Item #9 - *Corps will look into their authorities and appropriations for forming a LIS DMMP and coordinate with the Corps, New York District regarding their experiences with the New York Harbor DMMP.*

17. OCRM (Kaiser) said that we will hear from the Corps on this item later in the meeting.

Next Steps/Action Item #10 - *All parties are to review and provide OCRM with comments on the following draft "desk" statement including information regarding each agency's press contact.*

18. OCRM (Kaiser) noted that the draft "desk" statement was provided to give all parties a common response if asked how we were proceeding with the LIS DMMP. OCRM (Kaiser) encouraged everyone to review and revise the desk statement. EPA/Corps said they have used the desk statement and that it was helpful to have a common response to press and congressional inquiries.

DISCUSSION OF THE PROCESS FOR ADVANCING THE DEVELOPMENT OF A DMMP

Corps' Organization to develop DMMP

19. Corps (Vietri) said it will describe how the Corps intends to proceed on the LIS DMMP and how the Corps handled the New York Harbor DMMP. Corps (Vietri) said that Linda Monte of the Corps, North Atlantic Division, will be the program manager for the LIS DMMP.
20. Corps (Monte) generally described the background of DMMPs and how the need for DMMPs in the Northeast arose because the numerous navigation projects that were started in the region many years ago required a comprehensive plan for dealing with dredged materials. Corps (Monte) also noted that the need for the New York Harbor DMMP was the impetus for putting DMMPs into the Corps regulations.
21. Corps (Monte) described the DMMP process (as shown on slide 2 of the Corps' handout) as beginning with a preliminary assessment of whether to do a DMMP and noted that in this case we have all agreed we should move forward with the DMMP process for LIS. The next step is the Project Management Plan (PMP) where it is determined whether we continue dredging, and how long we should dispose of the dredged materials at particular sites. The next step is the Dredged Material Management Study that analyzes the various aspects of the dredging such as the economics for continued dredging and the costs of disposal. Following the conclusion of a Dredged Material Management Study, a major federal action must occur requiring the completion of an EIS. The next step is the Dredged Material Management Plan where the Corps will take a very broad look at the options for managing the dredged materials including both federal and non-federal navigation projects. When the recommended options are implemented, issues such as cost sharing may arise and site specific studies may be required.
22. Corps (Vietri) described the broad organizational structure the Corps expects to use in developing the LIS DMMP (as shown on slide 6 of the Corps' handout). The Corps has used this structure before. The top level of the structure is the Executive Steering Committee that needs to include some of the people present at this meeting and also officials who are higher up in the represented agencies. The next level is the Program Manager. Linda Monte will participate as a member of the Executive Steering Committee and also be the Program Manager. The next level, the Project Delivery Team is the most important group within this structure as it is the working group that will develop the DMMP. In making this structure work there may be a strong need to develop a strategic communications plan and conduct group development activities. The next level is the Independent Technical Review Team (ITR) which is a requirement for the Corps. The Corps has a team of folks who served on the ITR for the New York Harbor DMMP and the Port of Baltimore including, for example, a regional economist and a biologist. The ITR members do not have to be limited to people who are affiliated with the Corps. Corps (Keegan) noted that the ITR members are involved throughout the DMMP process. In addition, technical working groups will be formed to feed into the Project Delivery Team. This is where other federal agencies and offices will likely participate, e.g., NOAA's Fisheries Service. OCRM (Kaiser).
23. EPA (Brochi) clarified that EPA Region 2 will also be a part of the Project Delivery Team.
24. OCRM (Kaiser) asked if there would be costs for initiating the DMMP process and setting up the

Executive Steering Committee, Program Manager, and Project Delivery Team. Corps (?) responded there will be costs involved and such costs will need to be determined when putting together the PMP. Corps (Vietri) noted that they will be looking into seed money for the DMMP process.

25. Corps (Houston) described its organizational structure and approach for the New York Harbor (NYH) DMMP. Prior to the NYH DMMP, the Corps was not required to develop a DMMP. The initial study for the NYH DMMP cost approximately 4 million dollars and took 18 months. The NYH DMMP took approximately 4 years to develop and cost approximately 15 million dollars. The NYH DMMP had to include both federal and non-federal navigation projects and had to provide a plan for the entire region.
26. Corps (Houston) noted that a 65 year life was adopted for the NYH DMMP because at the same time a New York Harbor dredging project was going on that was scheduled to take 15 years and required 50 years of operation and maintenance dredging. For the LIS DMMP, there are not any current projects so the standard lifespan will likely be 20 years and will have to estimate the time period for dealing with each type of dredged material (contaminated and not contaminated). The LIS DMMP will have to include both long term and short term goals. The LIS DMMP will have to look at all alternatives and not just the Corps' projects.
27. Corps (Houston) noted that for the NYH DMMP, the harbor estuarine program played an important role in developing the NYH DMMP. The LIS DMMP should consider using the Long Island Sound Estuarine Study in a similar manner.
28. Corps (Houston) noted that as a result of regulatory activity, the primary goal of the NYH DMMP was for beneficial use of dredged materials with a secondary goal of active contamination reduction. However, other disposal options were also considered as a contingency if these goals were not met.
29. Corps (Houston) noted that all the affected agencies have to commit to funding the process. For the NYH DMMP, New York and New Jersey each contributed 10 million dollars to look into contaminate reduction. The NYH DMMP continues to require a huge partnership effort of staff and commitment of funds.
30. EPA (Murphy) asked how much the NYH DMMP cost. Corps (Houston) stated that the cost is 35 million dollars and still growing. Corps (Piken) noted that we will have to build on our previous experiences to determine how much the LIS DMMP is going to cost and at this time we do not know how much it is going to cost.
31. Corps (Vietri) noted that the Port of Baltimore DMMP is similar to the NYH DMMP but more complex. The process followed for both was the same. There was greater efficiency in developing the Port of Baltimore DMMP because of the lessons learned from the NYH DMMP. Corps (Piken) noted that while developing the Port of Baltimore DMMP, dredging continued to maintain channels in order to protect the economy of the region.
32. EPA (Brochi) asked whether the Corps EIS for developing the LIS DMMP would cover the individual projects necessary to carry out the LIS DMMP. Corps (Vietri) said the Corps' EIS would not cover the individual projects. For example, the Programmatic EIS may suggest that the building of a containment island would be necessary but a separate NEPA document would be necessary for

the actual building of the containment island along with separate authorization. For smaller projects an EA may be sufficient.

33. EPA (Brochi) asked how federal consistency would be conducted for the individual projects necessary to carry out the LIS DMMP. OCRM (Kaiser) noted that the parties can all agree to how they are going to conduct federal consistency and that the CZMA provides flexibility in how federal consistency can be applied. For example, the states could give a general concurrence.
34. OCRM (Kaiser) asked the states whether the process the Corps described for moving forward with the LIS DMMP is beneficial for the states and meets the needs of the states in moving forward. CTDEP (Evans) said the process described by the Corps is a reasonable approach and is what the state had anticipated. NYDOS (Stafford) agreed that the process described by the Corps is the right approach.
35. OCRM (Kaiser) suggested that the group discuss specifically who should be on the Executive Steering Committee and Project Delivery Team. Corps (Vietri) suggested that the heads of the Corps New England and New York Districts be on the Executive Steering Committee and after this meeting the participants should discuss who they feel should make up these groups and send their ideas to Lind Monte. OCRM (Kaiser) noted that the Executive Steering Committee and Project Delivery Team needs to meet as soon as possible. Corps (Vietri) suggested that the Steering Committee may include just one person and an alternative from each interested agency and an additional one or two people for the Project Delivery Team.
36. Corps (Piken) suggested that the group discuss the schedule of tasks that need to be addressed in the next couple of months. There are no specific funds in the 2005 budget for the LIS DMMP study. The Corps will need to find funds to pay through September 2005. For the 2006 budget, it is important for the New York and Connecticut Governors and Congressional Delegations to express their support for continuation of the LIS DMMP by sending a letter to the head of the appropriations committee by March 2005. In expressing their support it is important for the Governors and Congressional Delegations to specify a dollar amount to be authorized for developing the LIS DMMP. NYDOS (Stafford) noted that the joint letter from the states does ask General Sprock to initiate funds for the LIS DMMP. Corps (Vietri) suggested that the states move aggressively in getting their Congressional Delegations to express their support. Corps (Piken) stressed that it is important for the Congressional Delegations to meet face-to face with those who are responsible for appropriations. NYDOS (Stafford) clarified that the March letter would include language regarding appropriations and not authorization. Corps (Vietri) agreed but urged everyone to begin thinking about specific authorizations that will be required down the road. Corps (Keegan) noted that the amount to be authorized is important because it is the first cut at PMP costs.
37. EPA (Brochi) asked what the timeframe was for getting the action items started and when the meeting summary would be made available by OCRM. OCRM (Kaiser) answered that the action items should be started and not to wait for the meeting summary.
38. Corps (Keegan) said that he would look into posting the Corps' presentations on a FTP site and notify everyone on the attendance sheet.
39. OCRM (Kaiser) suggested that shortly after the joint letter from the states has been completed the

Steering Committee should address the framework, scope, and cost issues.

40. Corps (Vietri) suggested that meeting dates be set for the Steering Committee and Project Delivery Team initial meetings. NYDOS (Stafford) suggested that the Steering Committee meet first and the Project Delivery Team meet sometime in January. Corps (Vietri) proposed January 10, 2005, for the Steering Committee meeting and January 11 and 12, 2005, for the Project Delivery Team meetings. OCRM (Kaiser) suggested the meetings be held in Hartford, Connecticut. CTDEP (Evans) agreed that the meetings could be held in Hartford either at the State's offices or at some other meeting place. NYDOS (Stafford) asked whether the main players would discuss the agenda items for the meetings. Corps (Vietri) agreed that the main players would fashion the agenda items prior to the meetings.
41. OCRM (Kaiser) said OCRM is willing to stay involved in the process and asked the states to what extent they want OCRM to continue to facilitate the meetings. EPA (Cote) asked OCRM whether they are satisfied that they have gotten the ball rolling. OCRM (Kaiser) answered that OCRM's role is to make sure the needs of the states and federal agencies have been met and to continue coordinating with the parties on the federal consistency issues. OCRM (Kaiser) also noted that we now have the impetus to move forward and at some point the states and federal agencies will be satisfied on how the process is moving forward so OCRM's role at that time will be more limited to coordination of federal consistency issues. NYDOS (Stafford) said they appreciate OCRM's assistance up to this point. Corps (Piken) said that OCRM should continue to facilitate and be involved in the Steering Committee meeting to make sure the states and federal agencies are satisfied with how the process is moving forward. EPA (Murphy) agreed that OCRM continue to be involved through the initial Steering Committee meeting and beyond for now. OCRM (Kaiser) said OCRM would be glad to continue to be involved.
42. OCRM (Kaiser) suggested that NOAA and the other federal agencies can show their support for a LIS DMMP by providing a joint statement of administration policy/support. Corps (Vietri) agreed that it does not hurt to have additional support from the other agencies.

NEXT STEPS/ACTION ITEMS

1. New York and Connecticut are to finalize the joint letter from their Governors as soon as possible.
2. The NYDOS, CTDEP, EPA, and Corps are to each identify the Steering Committee and Project Delivery Team members who will participate from their agencies and forward this information to Linda Monte at the Corps. David Kaiser will be NOAA's representative on the Steering Committee and Darren Misenko will be David's alternate.
3. The Steering Committee meeting is scheduled for January 10, 2005, and the Project Delivery Team is scheduled for January 11 and 12, 2005. Both will be in Hartford, Connecticut. CTDEP needs to, as soon as possible, secure meeting locations and should also provide names of nearby hotels.
4. The primary goal of the initial Steering Committee meeting is to develop the overall objectives and charge to the Project Delivery Team. The primary goal of the first Project Delivery Team meeting is to address the framework, scope, schedule, and cost issues for the LIS DMMP.
5. OCRM will draft a joint statement for the federal agencies showing support for the LIS DMMP and

submit to the other agencies for review and approval.

6. Corps will develop the agenda for the January 10, 2005, Steering Committee meeting while considering the following NYDOS objectives and requirements:

OBJECTIVES. The objectives of the plan shall be-

- (i) to identify the major sources and quantities of dredge material and contamination that require disposal;
- (ii) to determine modifications or enhancements to current management practices that are to be taken to reduce sediment and contaminant loading of dredged areas;
- (iii) to thoroughly assess alternative locations, treatment technologies and beneficial uses for dredged material;
- (iv) to secure alternative methods of disposal of contaminated dredge materials, including decontamination technologies, and alternative uses of materials, including upland disposal, containment, beach nourishment, marsh restoration, habitat construction, and other beneficial reuses;
- (v) to confirm the specific roles of Federal, State, and local agencies with respect to various aspects of dredged material management; and
- (vi) to develop the planning basis for public agencies to carry out the responsibilities of those agencies. (Not clear what this item means – needs further clarification)

REQUIREMENTS. The plan shall include-

- (i) a description of strategies to reduce sediment loading of harbors and navigation channels;
- (ii) an assessment of sources of sediment contamination, (this has been completed in the EIS) including recommendations for management measures to limit or reduce those contamination sources (a lot of this is in the LIS CCMP);
- (iii) a description of options for reducing dredging needs through modification of navigation strategies; (Not clear what this item means – needs further clarification)
- (iv) a description of decontamination technologies, including subsequent alternative uses of decontaminated materials (such as upland disposal, containment, beach nourishment, marsh restoration, and habitat construction) (EPA notes that this will require a significant public outreach program, specifically to private marina operators to explain the cost, benefits, and availability of decontamination technologies.);
- (v) a program for use of alternative methods of disposal and use of dredged material , including alternatives to dumping or dispersal in a covered body of water; and
- (vi) a description of strategies for managing and monitoring dredged material disposal (including, by reference, the disposal site management and monitoring plans, and the Corps' DAMOS.) (This last requirement raises the question as to whether SMMPs are needed for disposal methods other than open-water (e.g., upland, decontamination, etc..))

7. OCRM will revise the Common Desk Statement and provide to meeting members for comment.
8. The NYDOS and CTDEP will contact their Congressional Delegations to inform them that the LIS DMMP process is moving forward and to discuss future plans for the LIS DMMP.
9. EPA Region 1 and NYDOS will work on developing a place holder for the LIS study funds for scoping meetings this summer.

10. List of participants at the December 8, 2004, meeting in Albany:

Name	Title	Agency	Phone Email
George Stafford	Director, Division of Coastal Resources and Waterfront Revitalization (DCRWR)	NYDOS	518-473-2459 gstaffor@dos.state.ny.us
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Darren Misenko	Federal Consistency Specialist	NOAA/OCRM	301-713-3155, x231 darren.misenko@noaa.gov
Molly Holt	Attorney Advisor	NOAA/GCOS	301-713-2967, x215 molly.holt@noaa.gov

11. Principle Points of Contact

Name	Title	Agency	Phone Email
George Stafford	Director, Division of Coastal Resources and Waterfront Revitalization (DCRWR)	NYDOS	518-474-6000 gstaffor@dos.state.ny.us
Charlie Evans	Director, Office of Long Island Sound Programs	CTDEP	860-424-3034 charles.evans@po.state.ct.us
Mel Cote	Manager, Water Quality Unit, OEP	EPA Region I	617-918-1553 cote.mel@epa.gov
Linda Monte		Corps, North Atlantic	Linda.B.Monte@usace.army.mil
David Kaiser	Senior Policy Analyst & Federal Consistency Coordinator	NOAA/OCRM	301-713-3155, x144 david.kaiser@noaa.gov

MEETING SUMMARY – October 13, 2004

**Meeting Between the New York Department of State (NYDOS),
U.S. Environmental Protection Agency (EPA), U.S. Army Corp of Engineers (Corps)**

**Facilitated by the National Oceanic and Atmospheric Administration (NOAA)
(NOAA's Office of Ocean and Coastal Resource Management (OCRM)
and Office of General Counsel for Ocean Services (GCOS))**

**September 2, 2004 - 1:00 to 3:00
NYDOS Offices - 41 State Street - 8th Floor - Albany, New York**

**Potential for Development of a Comprehensive Dredged Material Management Plan for
Long Island Sound – Initial Discussions**

INTRODUCTION AND OPENING REMARKS

1. OCRM (Kaiser) opened the meeting by thanking everyone for attending and stating the purpose of the meeting was to discuss the possibility of developing a Dredged Material Management Plan (DMMP) for Long Island Sound (LIS) and to determine if further discussions should proceed on the subject. OCRM (Kaiser) reiterated the purpose of this meeting is not to discuss the specifics of the NYDOS objection or EPA's possible response to the objection. NYDOS (Stafford) suggested the ultimate goal of this meeting is a proposal for a DMMP.
2. EPA (Murphy) noted its understanding that Connecticut does not object to the proposal to form a DMMP and suggested the potential outcome of this meeting is to establish some goals and a framework for developing a DMMP.
3. The New York Department of Environmental Conservation (NYDEC) (Stark) suggested there is general agreement on the goal to form a DMMP. NYDEC (Stark) also suggested that it may be beneficial to take advantage of a new budget and the interest of the states' congressional delegations to move forward in developing a DMMP.

DISCUSSION POINTS

Time Frame

4. EPA (Murphy) asked how long the NYDOS expected a rigorous DMMP will take. NYDOS (Stafford) stated the LIS DMMP should be quicker than the New York Harbor DMMP which took five years.
5. Corps (Habel) gave an overview of the eight or nine federal navigation projects in LIS that currently have a five year time frame including Bridgeport which has one and a half million cubic yards, half of which is unsuitable for open water disposal. NYDOS (Bruening) asked whether the Corps could produce a document which shows existing open water disposal sites and how long they can be used. Corps (Habel) stated they will provide NYDOS with the information requested. Corps (Habel) summarized that the central LIS site is no longer available for open water disposal but the west LIS, Cornfield Shoals, and New London open water sites each have five years to run.

Process

6. NYDOS (Stafford) asked whether Congressional authorization is needed because, according to Tom Waters of the North Atlantic Division of the Corps, a letter from the Governors of New York and Connecticut is sufficient to authorize the DMMP. Corps (Scully) suggested our goal should be to first determine where everyone would like to go with the DMMP and then the Corps, New England District will coordinate with Tom Waters and the Corps, New York District in figuring out how to gain the proper authorization.
7. Corps (Habel) noted that the Corps is authorized to develop DMMPs for individual Corps projects, maintenance, or for geographically proximate or connected harbors. Also stated the Corps, New England District cannot stretch the geographically proximate language to cover the numerous harbors within Long Island Sound and still need to look into whether the Corps already has authority or if Congressional authorization is needed.
8. OCRM (Kaiser) suggested that since disposal seems to be the primary issue it should be made part of the up-front process, rather than starting with dredging projects. Further, we should not get too concerned over semantics, but design a LIS DMMP that meets all of our needs, while keeping in mind that we need to determine what funds are needed to develop a LIS DMMP that may be beyond the “traditional” DMMP.
9. NYDOS (Stafford) noted the NYDOS has met with those involved with the New York Harbor dredging projects to see if they are interested in working with LIS. Suggested the need for a regulatory approach that considers other alternatives besides open water disposal and the NYDOS would like to see a similar thought process as the one used by the New York Harbor DMMP while taking a closer look at upland disposal. EPA (Fowley) stated that taking an approach that looks closer at upland alternatives may require authorization and will certainly require more funding.
10. NYDOS (Stafford) gave two examples of the approach they would like to see in the DMMP including the Glen Cove and Merchant Marine Academy where upland alternatives were found. Also stated they would like to institutionalize a process for upcoming projects while the DMMP is being developed. (General discussion) Any DMMP should not rule out upland disposal alternatives early in the evaluation process on the grounds of expense and should, instead, be thoroughly evaluated in the process. If the Corps feels it cannot do this under current authority, then efforts should be made to ensure that the appropriation or authorization for the DMMP addresses this issue and gives the Corps the necessary authority to adopt this approach. (NYDOS modified by EPA.)
11. EPA (Murphy) stated they would like to establish a legal mechanism for developing the DMMP while continuing to designate disposal sites. EPA (Fowley) noted they would like to see an approach where New York withdrew its objection and EPA was able to designate sites with time frame conditions.
12. OCRM (Kaiser), after conferring with GCOS (Holt), suggested the provision in the CZMA consistency process that allows federal agencies and states to agree to a flexible consistency time frame (§ 307(c)(1) of the CZMA) could be used to address the issue of the short term need to designate open water sites and New York’s reluctance to withdraw their objection. According to the CZMA consistency process, New York may not have to withdraw their objection but could agree in

writing with EPA to table their objection and open a supplemental consistency review. This agreement could be in the form of an MOU or MOA and should include Connecticut. For example, NYDOS and EPA could agree that EPA would modify the site designation proposal to include a DMMP sunset provision, include discussion of the DMMP proposal and objectives, and prioritize use of the designated disposal sites for short term high priority dredging projects. EPA would then give NYDOS and Connecticut a “supplemental” CZMA consistency determination (CD) for the modified proposal. The states would then review the supplemental CD and if NYDOS concurred, then its concurrence would allow EPA to move forward with its modified designation.

13. EPA (Brochi) asked how the “supplemental” consistency process works for a modified site designation. OCRM (Kaiser) believes that the supplemental process in 15 C.F.R. § 930.46, would allow EPA to modify the site designation and rely on the materials, NEPA process and public process EPA has already developed and used. If EPA provides a supplemental CD to New York and Connecticut, then under the CZMA process both states would provide for public comment on the states’ decisions.

Costs

14. OCRM (Kaiser) suggested that the agencies determine whether they have some start up money to develop the DMMP prior to any specific appropriations. The States should be approaching their Congressional delegations now to look into appropriations.
15. EPA (Cote) mentioned options for start up money including National Estuary Program (NEP) funds and/or funds from the \$6 million “Cross Sound Cable Agreement/Long Island Sound Research and Restoration Fund” that is being created by Long Island Power Authority, Cross Sound Cable Company, and Northeast Utilities Service Company as part of the bi-state agreement to allow electric transmission through the Cross Sound Cable.
16. EPA (Fowley) gave the example that for one hundred percent of Norwalk to be disposed of upland would cost well more than \$29 per cubic yard. Corps (Fredette) suggested that upland disposal could cost five to ten times the cost of open water disposal.

Scope of an LIS DMMP

17. EPA (Murphy) asked whether the scope of the LIS DMMP should cover all the harbors in LIS including federal and non-federal. NYDOS (Stafford) responded that the scope of the LIS DMMP should include all LIS harbors because NYDOS is concerned with the disposal from all projects not just federal projects.
18. Corps (Habel) noted the 55 federal navigation projects the Corps is conducting in the LIS which are inventoried in the FEIS. Also, noted the Corps has only developed DMMPs for federal navigation projects including those for New York harbor and New Jersey. Stated that for such DMMPs, the Corps makes a preliminary assessment regarding what needs to be done to maintain the required depth. If the Corps decides to move forward they consider dredge and disposal while assessing the various alternative uses for disposal and factoring in the costs of such alternatives. Noted the bulk of the cost for the federal projects are funded by the federal government and non-federal funding will be required for the non-federal projects. Mentioned that a LIS DMMP will require a lot of effort, time and money due to the large number of harbors in LIS and it could take 10 years or longer to conduct such projects on an individual, harbor-by-harbor basis.

19. EPA (Cote) suggested there are obvious efficiencies in using a regional approach to the various projects in LIS.
20. NYDOS (Stafford) noted that the scope of the DMMP is outlined by the objectives and requirements provided on page 3 of the agenda for the meeting. OCRM (Kaiser) suggested we use the NYDOS objectives as an initial outline for action items, funding issues, and legal constraints. Corps (Habel) stated that in regard to line (i) of the NYDOS Objectives, the Corps FEIS identifies the major sources and quantities of dredge material for federal and non-federal projects but still needs to establish the quality of the dredge material to determine what is suitable for open water disposal. Also noted there has been some opposition to the findings in the FEIS by the marine trade industry. EPA (Murphy) noted that in regard to line (vi) of the NYDOS Objectives, to develop the planning basis for public agencies to carry out their responsibilities, the agencies will have to provide an opportunity for public meetings as well as an ongoing forum to bring disparate ideas together in developing the objectives of the DMMP. EPA (Cote) suggested that groups such as the Long Island Sound Study's Citizen Advisory Committee (CAC) sediment focus group and other groups are interested in contributing to this process. Corps (Habel) mentioned that the Corps requested the participation of certain LIS groups during the development of the DEIS and received little response. NYDOS (Stafford) suggested the CAC and other groups are more likely to buy into a comprehensive plan rather than individual plans.
21. EPA (Fowley) suggested we will need to determine how the two step process used by the Corps in the FEIS is different than the process NYDOS would like to see for the DMMP considering that NYDOS would like to use an approach that doesn't write off upland options early in the process. Also offered that we may need something beyond the standard DMMP process. *See* also paragraph 8 under Process.
22. NYDOS (Stafford) suggested the DMMP should consider objectives such as better upstream sediment management and to dispose as little as possible into LIS. EPA (Cote) suggested that new "Phase 2" provisions of the NPDES Stormwater Phase 2 Rule, which are from the 1987 CWA amendments to § 402 provided for better waste water management; construction site management; and stream erosion prevention to reduce sediment. NYDOS (Stafford) said that sediment reduction should be the focus where dredging is required every three to five years. NYDOS (Stafford) pointed out that minimizing disposal in LIS will increase some costs but these increases can be accepted because they will drive new economies. Corps (Habel) stated that we agree on what to do with the contaminated dredged material but we need to reach an agreement on what to do with the material suitable for open water disposal. Also mentioned that the Corps is under a fiscal responsibility to dispose of dredged material in the most cost effective manner. Corps (Scully) asked do we have an estimate of how much is currently going to open water disposal? NYDOS (Stafford) responded, that approximately 60% is disposed in open water. EPA (Cote) does not disagree that we need to look closer at non-open water sites in the context of a DMMP. Corps (Scully) stated they will coordinate with the Corps, New York District to determine how they developed the DMMP for New York Harbor but still may conclude that some open water disposal is necessary.

Commitments

23. EPA (Fowley) asked if NYDOS wants a DMMP that takes a more comprehensive approach with a closer look at upland and other alternatives to open water disposal but still considers open water disposal when necessary? NYDOS (Stafford) responded, yes, but we need to know the process and time frame for developing a DMMP. EPA (Fowley) asked whether there is a legal mechanism to link

the prior site designation and subsequent DMMP. NYDOS (Bruening) responded there are a number of ways New York could link the two and one way would be for New York to withdraw the objection but this may not be the right decision for New York. EPA (Murphy) is concerned with working toward a DMMP while New York's objection is still in place because they have more than five years and seven million dollars invested in data that could go stale. OCRM (Kaiser) raised the possibility of meeting EPA's concerns and not having New York withdraw its objection. *See* paragraph 12 under Process.

Connecticut

24. NYDOS (Stafford) noted that Connecticut has contacted NYDOS to discuss next steps on the issue of developing a DMMP. NYDOS (Stafford) stated that New York and Connecticut will discuss the time frame and priority of certain sites. NYDOS (Stafford) informed OCRM that after the September 2 meeting in Albany, NYDOS talked with Connecticut. NYDOS reports that Connecticut wants to do a LIS DMMP and wants to join in future meetings and discussions. Connecticut will be providing NYDOS with information about their dredging priorities.

NEXT STEPS/ACTION ITEMS

The tentative date for completing the following Tasks/Action Items is October 2004. The tentative date for the next meeting was October 21 or October 22, 2004. However, October 21 is not good for OCRM and October 22 will not work for EPA. OCRM suggests October 28.

1. OCRM agreed to facilitate distribution of information provided by EPA, Corps, and NYDOS in addressing the discussion points and questions from the agenda including:

Time frame: How long would it take to develop a DMMP? What are the shortest possible steps to complete a comprehensive DMMP?

Process: How is the DMMP process initiated and who needs to do what? Is a Congressional authorization needed?

Costs: What would it cost for a LIS DMMP? Are there current funds available or are additional federal and/or state appropriations needed?

Scope of an LIS DMMP: What actions does NYDOS expect to be included in a LIS DMMP? In addition, the New York-New Jersey Harbor DMMP can provide additional detail about the scope and contents of a LIS DMMP.

Commitments: What commitments will EPA and the Corps make to ensure a comprehensive DMMP will be done and implemented in a timely manner? Further, if such commitments will satisfy NYDOS, what does this mean for EPA's current proposed open-water site designations pending the completion of a LIS DMMP?

2. EPA to draft and submit to OCRM a preliminary CZMA proposal for a revised designation plan with no commitments at this time.
3. NYDOS to continue discussions with Connecticut including a discussion of their immediate dredging needs.
4. Corps to provide NYDOS with an analysis of the short term dredging projects in LIS.
5. All parties to explore options for start up money to fund a LIS DMMP and submit findings to OCRM.
6. All parties to provide more detail on the following objectives and requirements from the NYDOS Initial Expectations for a LIS DMMP and submit to OCRM:

OBJECTIVES. The objectives of the plan shall be—

- (i) to identify the major sources and quantities of dredge material and contamination that require disposal;
- (ii) to determine modifications or enhancements to current management practices that are to be taken to reduce sediment and contaminant loading of dredged areas;
- (iii) to thoroughly assess alternative locations, treatment technologies and beneficial uses for dredged material;
- (iv) to secure alternative methods of disposal of contaminated dredge materials,

including decontamination technologies, and alternative uses of materials, including upland disposal, containment, beach nourishment, marsh restoration, habitat construction, and other beneficial reuses.

(v) to confirm the specific roles of Federal, State, and local agencies with respect to various aspects of dredged material management; and

(vi) to develop the planning basis for public agencies to carry out the responsibilities of those agencies. (Not clear what this item means - needs further clarification)

REQUIREMENTS. The plan shall include—

(i) a description of strategies to reduce sediment loading of harbors and navigation channels;

(ii) an assessment of sources of sediment contamination, (this has been completed in the EIS) including recommendations for management measures to limit or reduce those contamination sources (a lot of this is in the LIS CCMP);

(iii) a description of options for reducing dredging needs through modification of navigation strategies; (Not clear what this item means - needs further clarification)

(iv) a description of decontamination technologies, including subsequent alternative uses of decontaminated materials (such as upland disposal, containment, beach nourishment, marsh restoration, and habitat construction) (EPA notes that this will require a significant public outreach program, specifically to private marina operators to explain the cost, benefits, and availability of decontamination technologies.);

(v) a program for use of alternative methods of disposal and use of dredged material, including alternatives to dumping or dispersal in a covered body of water; and

(vi) a description of strategies for managing and monitoring dredged material disposal (including, by reference, the disposal site management and monitoring plans, and the Corps' DAMOS.) (This last requirement raises the question as to whether SMMPs are needed for disposal methods other than open-water (e.g., upland, decontamination, etc.).)

7. OCRM to provide a description of the CZMA consistency process that allows for federal agencies and states to agree to a flexible consistency time frame.
8. NYDOS will continue discussions with Connecticut on Connecticut's participation in the development of an LIS DMMP.
9. Corps will look into their authorities and appropriations for forming a LIS DMMP and coordinate with the Corps, New York District regarding their experiences with the New York Harbor DMMP.

10. All parties are to review and provide OCRM with comments on the following draft “desk” statement including information regarding each agency’s press contact:

PROPOSED COMMON DESK STATEMENT FOR EPA, CORPS, NEW YORK AND NOAA
(OCRМ is NOT suggesting that a press statement be issued. Rather, in the event the press does contact the agencies it might be helpful to have consistent statements.)

On September 2, 2004, in Albany, New York, the National Oceanic and Atmospheric Administration’s (NOAA’s) Office of Ocean and Coastal Resource Management (OCRМ) facilitated a meeting with the New York Department of State, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps). The purpose of the meeting was to discuss the possibility of developing a comprehensive Dredged Material Management Plan (DMMP) for Long Island Sound. This was an initial meeting to determine if further discussions should proceed. If further discussions will occur, the State of Connecticut will be included. The purpose of the September 2 meeting in Albany and further discussions was *not* to discuss the specifics of New York’s objection to EPA’s proposed open-water dredged material disposal sites or EPA’s possible response to the State’s objection.

The discussions were useful and will continue. It may be possible to meet New York’s concerns, establish a DMMP process for Long Island Sound, and meet the public need to designate the proposed disposal sites. The parties agreed to provide additional detail describing how this might be accomplished and to meet again in October to determine what, if any, steps should be taken next.

Background: EPA proposes to designate open-water sites in Connecticut’s Long Island Sound waters for the disposal of material dredged from New York and Connecticut rivers and harbors. Under the federal Coastal Zone Management Act (CZMA), because the disposal of dredged material at the proposed sites would have reasonably foreseeable effects on land or water uses or natural resources of New York’s and Connecticut’s coastal zones, EPA provided a “consistency determination” to the two states for their concurrence or objection.

Connecticut concurred with EPA’s proposal. New York objected. Under the CZMA and NOAA’s regulations implementing the CZMA, EPA may proceed with the site designations over New York’s objection if EPA can assert that it is either fully consistent with New York’s federally approved CZMA program and/or is “consistent to the maximum extent practicable” with New York’s CZMA program. One of New York’s chief concerns is that a comprehensive DMMP is needed for Long Island Sound. The September 2 meeting was arranged to discuss a possible DMMP for Long Island Sound and if commitments can be made for a Long Island Sound DMMP to the satisfaction of the State of New York.

Press Contacts:

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State of Connecticut:

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NOAA/OCRM: Ben Sherman, NOAA Public Affairs, 301-713-3066 x178, ben.sherman@noaa.gov

13. List of participants at the September 2 meeting in Albany:

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Molly Holt	Attorney Advisor	NOAA/GCOS	301-713-2967, x215 molly.holt@noaa.gov

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Mel Cote	Manager, Water Quality Unit, OEP	EPA Region I	617-918-1553 cote.mel@epa.gov
Mark Habel	Project Manager	Corps, New England District	978-318-8871 Mark.L.Habel@usace.army.mil
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